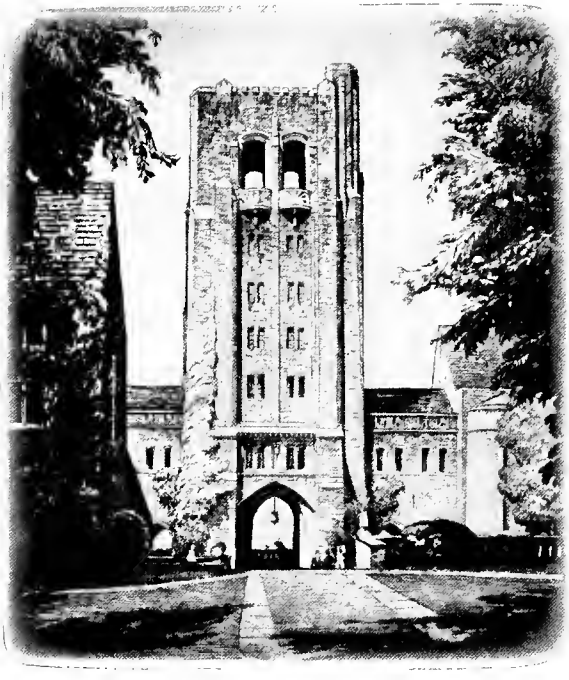

REMINISCENCES

OF THE

RHODE ISLAND BAR.

BY

ABRAHAM PAYNE.

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DEDICATORY LETTER

To the Honorable Charles S. Bradley, LL.D.

My Dear Bradley:— You rose rapidly to eminence in the profession of your choice, and were early elected Chief Justice of the Supreme Court of the State, by the unanimous vote of the Legislature, when largely composed of men differing from you in political opinions. Since your voluntary retirement from that high office, among many other claims to distinction, you have been an acknowledged leader of the bar.

You will not be surprised, therefore, that I wish to connect your name with these reminiscences of men — many of whom you have known intimately as associates and as opponents in the contests of the forum. These papers will seem very inadequate to you, but I venture to think that you will find them neither dull nor ill-natured. I have other reasons for asking permission to dedicate this little book to you; for your recent valuable contribution to the important subject of American Constitutional Law, and also to remind you that I have not forgotten the pleasure and instruction received from you in some of the morning hours of the day upon which the evening shadows begin to fall.

Yours sincerely,

ABRAHAM PAYNE.

Providence, R. I., May, 1885.

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REMINISCENCES

OF THE

RHODE ISLAND BAR.

I.

A Lawyer's Office Forty Years Ago — General Thomas F. Carpenter — Personal Appearance and Traits — Treatment of Clients and Conduct of Cases in Court.

On the fourteenth day of September, 1840, I entered the office of General Thomas F. Carpenter as a student at law. On this fifteenth day of December, 1883, I commence what I intend to make a record of some of my reminiscences of law and lawyers in Rhode Island.

The office of General Carpenter was a single large room, up one short flight of stairs, in the building at the junction of Westminster and Weybosset streets, known as the 'Turk's Head.' The room was uncarpeted, it contained a moderate bookcase with a small collection of law books, an old-fashioned desk and a very limited supply of pigeon holes, a large table covered with green baize cloth, an old-fashioned cylinder stove, a few common chairs and a long wooden settee. At one end of the room was a coal bin, and there was a small safe. I may mention as illustrating a change in the habits of law students that during the two years while I remained a student with General Carpenter, I swept the office and made the fires, and did all the errands now usually expected of an office

boy, and this without compensation except that I was charged nothing for my tuition.

I had no previous acquaintance with General Carpenter, although I had often seen him upon the street. At the request of my friend, Edward D. Pearce, Esq., he had consented to receive me as a student, and found me at his office at the close of a busy day in court. He came in, and laying down his green satchel upon the table, greeted me with much dignity and courtesy, and asking me to be seated, commenced conversation by explaining to me that a lawyer should make himself familiar with the Bible, and taking the book, read some passages in confirmation of this advice. He said that it was his daily habit to read a chapter in the original Greek in his house every morning. He then proceeded to impress upon me the importance of treating everything that should pass in the office as strictly confidential, remarking that in his safe there were wills and conveyances which if known would startle the community.

Quite a number of people have tried their hands at a description of General Carpenter, and an analysis of his character. I shall attempt nothing of the kind, but content myself with recalling some of the circumstances which have fastened themselves upon my memory. He was of middle height, had a very large head, and uniformly wore a blue coat with brass buttons, black pantaloons, black satin vest, ruffled shirt, and black cravat. His manners were dignified, but affable. In his intercourse with clients, with his students, and with his brethren of the bar, he was always courteous, and when appearing before the

courts, he was a model of dignity and deference to the tribunal. So much for the outward man. In his temper there was a mixture of kindness and prejudice. I think he was never rude in the presence of any human being, but he knew how to make known what was his real opinion, and those whom he met in daily intercourse knew very well for what individuals, and what classes of people, he entertained feelings of hostility or of contempt. While I was in his office, he rarely looked into a law book, and yet he was in one sense the best lawyer I have ever known. In his early life, he must have been a careful student of the common law, and somehow he attained a competent acquaintance with equity jurisprudence, the practice of which was then recent in the courts of Rhode Island. He never gave any bad advice. Nobody got into a foolish lawsuit who consulted General Carpenter. It was his custom to say to a client, who was anxious to get his grievances into court : 'No doubt you have a perfectly good case, but there are some technical difficulties in your way, and I think it is for your interest to make a settlement.' In this way he seldom lost a cause in which he appeared in court, and the reputation of success largely increased the number of his clients.

General Carpenter was a Democrat, and in those days it was possible to tell the difference between a Democrat and a Whig by a reference to their opinion on the question of public policy. The Whigs favored a national bank and a protective tariff ; the Democrats wanted the sub-treasury and tariff for revenue only. In Rhode Island the strength of the Whig

party was in Providence and the large towns; the strength of the Democratic party was among the country farmers. I am treating now of law and lawyers, and shall reserve my comments upon political matters for some future occasion. General Carpenter's clients were for the most part from the country towns. He had not much of what is called office business. He spent very little time at his desk, and was occupied for the most part with his cases in court. Some farmer from Scituate or Foster would appear in the office early in the morning with a question of law. General Carpenter would listen to his statement, and after inquiring about his family, and expressing a desire long cherished to visit him at his home and drink some of his good old cider, he would say to his client: 'This is a very important question; I have often thought about it, and now I must make up my mind. I have a library in my house where I study these questions late in the evening and early in the morning. I am so occupied during the day that I have no time for reflection; if you would call in day after to-morrow morning, I will give you my opinion.' During the day, General Carpenter would talk over this question with such lawyers as he would happen to meet in the court-house or elsewhere, with Richard Ward Greene, Samuel Ames or Charles F. Tillinghast, and not unfrequently with James C. Hidden, who had an office in the same building, and though not a lawyer by profession, was a man of great ability, and had what is called a legal head; that is, common sense not confused by that little knowledge of law that is a dangerous thing. At the time ap-

pointed, General Carpenter would be prepared to give an opinion not likely to be overthrown in any future controversy, and the client would feel that he had got the result of much study, and would cheerfully pay the moderate fee which the General was accustomed to charge. I may here remark that General Carpenter's charges were always moderate, and to persons unable to pay even these charges, his services were frequently cheerfully rendered. While I was in his office, his income was not large, not exceeding, I think, three thousand dollars a year.

To see General Carpenter at his best, he must be observed while trying a case in court, with perfect courtesy to his opponents, with deference to the court, and even to his junior associate. He took short notes of evidence. He was not afflicted with the disease of cross-examination, and while he was sure to obtain from a witness all that he knew which would help his client, he never drew out of him anything that would prejudice his case. When he came to the argument, his manner of speaking was formal and precise; he indulged in neither wit nor humor, and never made any exhibition of rhetoric, but he knew exactly what to say to a Rhode Island jury and a Rhode Island court. After the argument was concluded, he listened with profound attention to the charge of the court, and no juryman ever saw any indication that General Carpenter was dissatisfied with what fell from the judge; he rarely took any exceptions to the charge, and he rarely failed to get the verdict of the jury. When some years since I read the life of the great English advocate, Scarlett,

afterwards Lord Abinger, I seemed to be reading about General Carpenter, so exactly similar were the two men in their mental habits and in their mode of conducting the trial of causes.

II.

Fellow Students — The Court and the Bar in 1840 — Contrast to the Present Mode of Presenting Questions to the Court — Eloquence at the Bar.

Before leaving the office to take a bird's-eye view of the bar and of the proceedings in court, I must say a word about my fellow students. One of them I have seen recently alluded to as a veteran journalist. When I saw him a few years since, he was indeed a veteran, but to me he is always the Charlie Congdon I knew in college and in General Carpenter's office. He early left the bar for more congenial pursuits, and has done good work as a journalist. His recollections have been published, and a better idea can be had from his little book of the political history of the country than can be obtained from larger and more pretentious works. Walter W. Updike, whose early death was lamented by a large circle of friends, never attempted to distinguish himself at the bar, and it does not fall within the province of these papers to dwell upon the social qualities which made him a charming companion and keep his memory green. Benjamin F. Latham practiced law for a few years, and his character and career were so remarkable that he is entitled to and shall have a full notice, in the proper place. I must now ask the reader to go with me to the old court-house, at the September term of the Supreme Court, 1840. On the bench are Job Durfee, chief justice, and William R. Staples and

Levi Haile, associates. Within the bar, around one large table, are seated Samuel Y. Atwell, Thomas F. Carpenter, Samuel Ames, Albert C. Greene, attorney general; and among younger men, William H. Potter, Samuel Currey, John P. Knowles, George Rivers, and Edward H. Hazard. From Woonsocket are Christopher Robinson and Judge Daniels. From Scituate, Jonah Titus. From Pawtucket, John H. Weeden. John Whipple and Richard Ward Greene are not present. They alone, among the leading members of the bar, have adopted the practice of coming to the court-house only when one of their cases is in order for trial. The docket has been called, and Mr. Atwell, whose home is in Chepachet, and who spends much of his time when he is in the city in the court-house, rises and addresses the court: 'May it please your honors: if the court are not engaged, I would like to call attention to the fact that most of those persons who hang about the court-house for the purpose of being taken up on *venire* are now present, and I presume would be glad to know whether their services will be wanted.' Thereupon several well-known parties are quietly leaving their seats and making their way to the door. I shall have much to say of Mr. Atwell, but this was his way of calling the attention of the court to a great nuisance.

Let us now attend the opening of the December term of the Court of Common Pleas. It is the same room in which the Supreme Court was held. The different courts and terms did not interfere with each other. The September term of the

Supreme Court was over in time for the December term of the Court of Common Pleas. The Common Pleas made way for the General Assembly, and the General Assembly adjourned, and left time for the Supreme Court at its March term. The different courts had ample room and time in the other counties without interfering with each other. There never was more than one court in session at the same time, and the attorney general, without assistance, attended all the courts and the General Assembly, and found time to conduct a large private business. I have heard the causes of the change that has come over the State, in this respect, explained in various ways, some of them very philosophical and profound; but some of these causes lie on the surface. The courts met early in the morning, and sat, with a short recess, until long after candle-light in the evening. Neither parties nor interested witnesses could be heard in evidence. No one of the prominent lawyers, as I remember, spent much time in cross-examining the witnesses of his opponents. There were no stenographic reporters. There were no printed reports of the cases, and very seldom written opinions delivered by the court. Cases were seldom held for advisement for a long time, and exceptions and rehearings were very rare.

When the act was passed, providing for a reporter of the decisions of the Supreme Court, Charles F. Tillinghast was appointed, but declined to accept the office. It was then offered to me. I called upon Judge Staples to consult him about the matter, and I well remember his voice and manner as he said:

'You can take the office if you choose, but we shall make you all the trouble we can. We shall give you no written opinions, unless we are compelled to do so. We don't want any reporter or any reports. We mean to decide cases rightly, but we don't want to be hampered by rules, the effect of which would be to defeat justice. We had a petition for a new trial before us in Newport county, last term; there was no rule or authority by which we could grant it; but we saw that if we did not grant it, an honest farmer would be cheated out of his farm, and we granted it without giving any reasons for doing so.' I declined the office, and it has been held by able men until the number of volumes is quite respectable, and I have not observed that any evil consequences have followed, and I quite agree with those of my brethren who think that judges should give reasons for their decisions.

But I wander, and the Common Pleas is open and waiting. Chief Justice Thomas Burgess, a grave and distinguished magistrate, is on the bench; on his left sit Judges Potter and Armstrong; on his right, Judges Howard and Westcott; a motion for continuance is argued; John H. Weeden, of Pawtucket, opens the motion. Probably some of my readers may remember his deliberate style. He states the name of the absent witness; recites, much in detail, what he expects to prove by him, shows that his testimony would be very material, and repeats the means that have been taken to procure his attendance and their failure. General Carpenter resists the motion; he does not see that the witness, if present, could give

any material testimony, and is quite sure that if proper diligence had been used, the attendance of the witness might have been secured. Mr. Whipple follows on the same side, and after speaking very slightingly of the materiality of the absent witness, ridicules the pretense that any proper diligence has been used, winding up with: 'May it please your honors: there is nothing diligent about this case except the grave face of my brother Weeden, which always *looks* diligent.' Then Richard Ward Greene rises to close the motion; he rebukes Mr. Whipple for his flippant remark about Mr. Weeden, and is astonished that his learned brothers Carpenter and Whipple should have the face to oppose so reasonable a motion, and gets very earnest over the consequences to his client of being compelled to go on with the trial in the absence of the witness. The judges then consult together, and presently the chief justice announces that the majority of the court are of the opinion that the motion must be denied. It is quite evident that Judges Westcott, Howard and Potter have seen through the motion and have overruled the chief justice and Armstrong. This will give a correct notion of the mode in which business was transacted in court at that time. In every cause, there were two counsel on each side, and all the incidental motions were regularly argued in the manner above described, and these arguments did not occupy so much time as I have frequently seen consumed by two young lawyers, one on each side of a case, and talking alternately until the court, weary of their repetitions and contradictions of each other, stops the discussion, and

sometimes decides the motion and sometimes holds it for advisement.

While I was a student, I had very little personal acquaintance with members of the bar, but I attended court when any trial of importance was held, and so became familiar with the lawyers who conducted these trials. It is difficult, perhaps, to separate the impressions made upon me at that time from the knowledge afterwards acquired when I was a member of the bar, but I shall do it as well as I can. These trials were conducted for the most part by John Whipple, Samuel Y. Atwell, Albert C. Greene, Richard Ward Greene, Thomas F. Carpenter and Samuel Ames. Occasionally Judge Daniels, Christopher Robinson, John H. Weeden or John P. Knowles would be associated with some one of the gentlemen above named, and in the year 1840, Charles S. Bradley and Thomas A. Jenckes were admitted to the bar, and soon became prominent in the trial of causes. Members of the bar who in these days notice that important causes are frequently tried in an empty court-room, no one being present but the judges, counsel, witnesses, and sometimes officers of the court, and sometimes parties in the case, will hardly realize the change that has taken place. When I was a student, almost always there was a large attendance of spectators in court, and when it was known that Mr. Whipple, or Mr. Atwell, or General Greene was to speak, the court-house would be crowded, many prominent citizens of Providence being present. Probably the presence of an audience had some effect upon the speakers. Chief Justice Marshall said that

'when Mr. Pinckney was on his feet, he could tell when ladies entered the court-room without raising his eyes by the change in Mr. Pinckney's style of speaking.' Within a year or two, I have seen a letter published by a Justice of the Supreme Court of the United States, in which he says that the days of eloquence at the bar are gone by. This, I think, is a mistake; there will always be eloquence where there is the man, the subject and the occasion. But there has been a great change in the mode of arguing cases in the State since I was a student-at-law. Attorney General Greene, for instance, never addressed court or jury without consulting propriety in every detail. Cicero was not more careful in the arrangement of his robes than was General Greene to appear in appropriate costume. There was nothing rude or slip-shod in his manner. His voice was carefully modulated, and his whole bearing was dignified and persuasive. General Greene was a thoroughly instructed lawyer, a skillful and successful advocate, but he was first of all and always a gentleman. When Samuel Y. Atwell was to speak, all eyes were fastened upon him, and all ears were compelled to listen. He was a natural orator and a profound lawyer.

John Whipple was not so uniformly eloquent as Mr. Atwell, but he had a powerful mind, fully conscious of its own strength, and, when speaking, secured the close attention of court, jury, and audience. Though a great lawyer, he did not always confine himself strictly to the case in hand, and everybody was on the watch to hear what striking or brilliant thing he would say next.

Richard Ward Greene, though not an eloquent, was often a convincing speaker. He always came to his argument fully prepared, and I think his brethren of the bar felt that he was a 'foeman worthy of their steel.'

I did not have the benefit of instruction at a law school, but I think the loss was, in great part, made up to me by listening to these men while I was a student.

III.

TRIALS BEFORE JUSTICES OF THE PEACE — JOHN WHIPPLE'S UNCONSCIOUS SOPHISTRY — ONE OR TWO BREACH OF PROMISE CASES — JUDGE SHEARMAN'S PATRIOTIC CHARGE CONCERNING DOGS.

I do not think that I was what is called a hard student. Mr. Whipple said that the true test, whether a young man was fit to be a lawyer or not, was whether or not he could keep himself warm, on a cold day in December, without a fire, by reading 'Fearne on Contingent Remainders.' I do not think I could have stood that test. Mr. Currey was often heard to say that, while a student, he spent fourteen hours a day for three months in the study of the first volume of 'Chitty on Pleading.' I never spent so much time on any book. But I was not idle. I occupied a good many hours every day in reading law. I did most of the conveyancing in General Carpenter's office, but that was not much. I drew most of the declarations in actions which he commenced, but they were mostly formal. In contracts, or other papers of much delicacy or difficulty, and in cases where special declarations were required, he had associates, and the work was done out of the office. I found plenty of time for pleasant intercourse with Congdon, Updike and Latham. When I entered the office, the singing campaign of the Whigs was at its height, and we were all Democrats, including John P. Knowles and James C. Hidden,

who had offices on the same floor. Soon after the election of General Harrison, the movement for the extension of suffrage was set on foot. In the following spring, the death of General Harrison, and what the Whigs called the treachery of Tyler, deprived them of all the fruits of victory. The mass meetings, the political conventions and the Dorr war followed, and occupied much of my attention. Of these matters I propose to write, but not now.

One of the privileges which General Carpenter gave me, as a student, was to try cases before justices of the peace. These cases were not numerous, and I remember only two. One was a civil suit for a bill for butchers' meat, amounting to thirteen dollars. I was employed by the defendant, and after consulting with General Carpenter, I prepared a plea in abatement, for that the writ contained no bill of particulars, and started on the morning of the court day for the office of the magistrate, and found him, after some inquiry, in an upper chamber, shaving himself. He was a stout man, well advanced in years, having a fine, gray head, bright blue eyes, and a hearty but pleasant voice. He asked me what I wanted? I told him I appeared for the defendant in the case, and wished to file a plea in abatement. He asked me what was the matter with the writ. I told him that it contained no bill of particulars. He said, very pleasantly: 'I shall not allow any plea in abatement. I know the man very well; he has had the meat, and he must pay for it. I shall enter up judgment for the plaintiff.' I returned to the office and told General Carpenter the result of my first case. He said it was

just what might have been expected from a Whig justice of the peace, and there the matter ended. I have sometimes been snubbed in higher tribunals, but seldom, if ever, in so courteous and kindly a manner.

My next client was a woman, against whom a warrant had been issued for an assault upon another woman. This time I found the court sitting in an office in the old Whipple building, on the corner of South Main and College streets. It was on the afternoon of a warm day in July, in an office on the lower floor of the building. The court proceeded at once to try the case. It appeared in evidence that my client, standing at a chamber window, had emphasized some rather strong remarks by throwing a pan of dirty water upon the complainant, who stood on the sidewalk below. This, I contended, in an argument of some length, was not an assault. The court listened with much gravity, and when I had concluded, said: 'I rather think this is an assault; but, considering the present state of the weather, not of an aggravated nature. I will fine the woman one dollar.' Upon my urgent appeal, he said: 'Let the fine, then, be one cent.' This the woman paid with the costs, which so exhausted her resources that she had no means of paying my fee. Thus ended my second case. The same magistrate was afterwards distinguished as attorney general of the State, and for many years adorned the bench of our Supreme Court, and is now enjoying well-earned retirement. If his eye should fall on these lines, he may possibly remember how he tempered justice with mercy in his

capacity as justice of the peace, as he afterwards did in the great offices which he held with so much credit to himself and benefit to the State. He may be glad to know that, looking back on his decision in my case, I can say, as Mr. Sheffield did, after listening to one of his rulings on the bench in Newport: 'I am inclined to think that your honor was right.'

I remember a case which was tried, I think, when I was a student, but my memory of dates is not accurate, and it may have been later. For obvious reasons, I shall avoid the use of names. A lady, whose virtue had been assailed in vain, had been betrayed by a mock marriage, at which a man had been induced to personate a clergyman or a magistrate, I forget which. A farmer in a country town had in some way been induced to believe that a respectable citizen of Providence was the guilty party who had officiated at the pretended marriage, and had so reported. What ought to have been satisfactory evidence that he was mistaken was presented to him; but he was one of the large class of persons who find it difficult to be convinced that they have made a mistake, and he continued to repeat the charge. An action of slander was brought against him, and he was defended by General Carpenter and John Whipple. I do not remember even the names of the counsel for the complainant, and recall nothing distinctly but one powerful passage in Mr. Whipple's argument. Of course, the counsel for the complainant had urged the repetition of the charge by the defendant, after evidence of his mistake had been presented to him, as proof of actual malice, and in aggravation of damages; but

Mr. Whipple urged that his client, the defendant, was an honest man, and made the original charge without malice and in the full belief that it was true; he was the same honest man when he repeated the charge, without malice, and though he ought to have been convinced by the testimony presented to him, he was not, and repeated the charge without malice and in the belief that it was true; the repetition, Mr. Whipple urged, did no harm to the plaintiff, for he was a man so well known and so highly respected that the original charge had spread like wildfire through the community and had done all the mischief that could be done; the repetition had added nothing to the injury. That there was a fallacy somewhere in this argument there can be no doubt, but the jury did not detect it, and the verdict was for a small amount. Such was the earnestness and power of his appeal, that I doubt if Mr. Whipple himself was aware that he was using sophistry. One of the witnesses in this case was Deacon Bump, of the First Baptist church, a venerable and venerated citizen; and Mr. Whipple, to emphasize the high character of Deacon Bump, called him 'a stone pillar, set in the rock of ages.'

And here I will mention another case, in which I wish to avoid the use of names. It was tried after I was admitted to the bar, and I had a sort of connection with it as counsel. It was an action for breach of promise of marriage, in which a very worthy lady was plaintiff, and an estimable and wealthy citizen of Providence was defendant. The action was in the Circuit Court of the United States. General Carpen-

ter represented the plaintiff, and Samuel Y. Atwell and George Rivers the defendant. I was at the time a partner of Mr. Rivers, and one fine Sunday morning he proposed that we should go to Chepachet and hold a consultation with Mr. Atwell. We took with us a fine salmon, in the expectation that it would be boiled for our dinner, and so wind up the consultation in a very pleasant way. The morning ride to Chepachet was delightful, but the great lawyer, though ordinarily a genial and hospitable man, was moody and not inclined to talk much about the case, and we heard nothing of the salmon nor of the dinner. In due time we left for home, hungry and disgusted. We stopped in North Providence at the house of Mrs. John W. Lyman, and were comforted by a hearty tea, and passed some hours in the society of that brilliant and charming woman. I should like to repeat some of the bright things Mr. Rivers said to his aunt about his associate, but like so many good things, they would lose all their flavor if repeated at this distance of time, when, except myself, all the parties have gone beyond the reach of wit or sarcasm. When this case was tried, General Carpenter recovered a verdict for his client for the full amount of the damage claimed in the writ.

Another case of breach of promise of marriage was tried in the State court not long after I was admitted to the bar. The plaintiff was a maiden lady no longer young, and the defendant was a Methodist minister, of whom I remember nothing, except that he was fond of a good cigar. And it appeared in the course of the trial that he had smoked one with much

satisfaction which had been presented to him by his lady love. Samuel Y. Atwell and John P. Knowles were counsel for the plaintiff, and Samuel Ames for the defendant. Mr. Knowles opened the case in a speech of much energy and pathos, in the course of which, describing the forlorn condition of his deserted client, and the small chance, on account of her advanced age, she would thereafter have in the matrimonial market, he spoke of her as 'a withered branch on the ancestral tree.' The case was a tempting one to Mr. Ames, and he adopted a very dangerous line of argument and ridiculed the old maid and his client, her reverend lover, to the great delight of the court-room, including bar, bench, jury and spectators. But he was followed by Mr. Atwell, who changed the tone of the whole proceeding; before he had finished his argument, several of the jury were shedding tears over the wrongs of the injured maiden. After a brief charge by the presiding justice, the jury retired and very promptly returned into court with a verdict for the full amount of the damages claimed in the writ.

I will here give another illustration of the danger of treating a case with levity. When Francis Colwell was with me, we were applied to by an Irishman to bring an action against a fellow-countryman of his. He had been bitten in the leg, he said, by a dog which the owner should have kept chained by reason of the then state of the moon. He did not pretend to have received serious injury from the bite; his grievance was that the defendant had failed to chain up his dog at that precise stage of the moon. We

told him that it was very doubtful if he could win the case at all, and at all events the damages would be small, not by any means enough to pay his counsel fees; but he insisted and we brought the action. The defendant employed Edwin Metcalf and Charles S. Bradley. Just before the case was called for trial, Mr. Colwell took me into the jury-room and warned me against what he called 'making fun of the case.' I promised to be careful, and while the jury were being called, Mr. Bradley said to me: 'Are not you and I too old to be trying a dog case; had we not better leave it to Colwell and Metcalf?' Mindful of the warning I had received, I replied, with much seriousness, that my client would not consent. Mr. Colwell opened the case with much dignity and without a smile. Mr. Metcalf opened for the defense with sufficient gravity, but Mr. Bradley, contrary to his usual custom, undertook to laugh the case out of court. In closing the case, after reproving Mr. Bradley for his unexpected and unusual levity, I made, perhaps, the most solemn address to the jury which had been heard in that court-room for a long time. Before I had finished, the presiding justice, Sylvester G. Shearman, was anxious to begin his charge (it will be noticed that the time was during our civil war). As soon as I had taken my seat, the judge broke in with: 'Gentlemen of the jury: much has been said in this case about dogs and men, and as to which is the nobler animal of the two. One thing I can say to you, that no dog was ever known to be educated at the expense of the government and then to rebel against it.' The jury promptly returned a verdict

for the plaintiff, and if any one desires to know the particulars of our settlement with our client, he can consult Mr. Colwell. As well as I can remember, the serious treatment of the case by Mr. Colwell and myself was confined to the court-house, and was not kept up in our private consultations while preparing the case for trial.

IV.

ADMISSION TO THE BAR — FIRST OFFICE AND FIRST ASSOCIATE IN BUSINESS — THE CHANGE IN CIRCUMSTANCES AND MEN.

But it is time for me to be admitted to the bar. At that time there was no examination of students. After evidence that the candidate had received a liberal education, that is to say, a degree from some college, and had studied law for two years, he was recommended for admittance at a meeting of the bar, and admitted to practice upon taking the oath to support the constitution of the United States and the constitution and laws of this State. The bar stood up while the oath was administered, and his friends congratulated the newly-made lawyer. On one occasion I remember an older lawyer taking the hand of a young man and saying, pleasantly: 'I don't think you will have any difficulty in supporting the constitution of the United States, but you may find some difficulty in supporting yourself.' If the candidate had not received a liberal education, he must have studied three years before admission to the bar. Not long after I was admitted, a rule was adopted requiring the examination of students by a committee appointed by the court. So long as a special committee was appointed for each candidate, the examinations were not always severe, and the present rule was adopted, by which, at each term of the Supreme Court, a committee is appointed for the examination

of all candidates. Under this rule, as I understand, examinations are thorough, and only those who have made suitable preparation can gain admission to the bar. My own two years of study expired on the fourteenth of September, 1842, and I went to Bristol and was admitted there, upon the certificate of General Carpenter, and upon his written guaranty that he would be responsible for the payment of the required fees, which were then a tax of twenty dollars to the State and two dollars and twenty-five cents to the clerk of the court. The clerk was a very kind old gentleman; his name, I think, was Throop; it was several years before he applied for the payment of the fee, and even then he charged no interest. He long since entered into rest, and I have no doubt that his indulgence to me was entered to his credit in his final account.

I opened an office in the granite building on the corner of North Main street and Market square. It was a small, dark room. A friend presented me with an air-tight stove; I purchased half-a-cord of wood, which was piled up in one corner of the room; the few books which I had were piled up in another corner; I purchased a table for two dollars, and four chairs for fifty cents each, and thus equipped commenced the practice of the law. While in that office I remember many quiet and lonely days, but only one incident worth relating. I had issued a writ of replevin in favor of an Irishman against A. & W. Sprague for the carcass of a hog. Soon after, a very large man, with whom I had no previous acquaintance, entered my office and called me to account for issuing this writ. He applied several epithets to me,

among which 'pettifogger' was not the most severe. I explained that the plaintiff had made the proper statement to me and had furnished the proper bonds, and that I had done only my duty in issuing the writ. He left the office, saying: 'I will teach you to bring actions against me.' This was Amasa Sprague. The next day he called and said: 'I was all wrong about that hog; I have returned it to the man and paid the costs, and now I want to pay your fee.' This he did, and from that time to the day of his death I traced several cases which came to me to his friendly recommendation.

I had not been in this office many months when George Rivers offered to take me into partnership. I accepted the offer, and we opened an office in the Franklin House building, on College street. The sign of 'Rivers & Payne,' painted on the walls of the building, was visible until a recent time, if it is not so now.

I do not like to write about George Rivers, and yet I cannot quite reconcile myself to an entire silence about him. In a clever ballad, Wellington is made to interrupt Macauley with:

> 'You shall not twist my name into a jingling lay,
> Nor mingle in your puny song the thunders of Assay.'

In something of the same spirit I can hear Rivers speak to me. 'I challenge you,' he would say, 'as juror or judge in my case.' While I feel the full force of the appeal, I must still be allowed to say some few words in memory of a man whom none who knew him will ever forget. Those of us who were of

his profession, and who met him daily, and who still survive, Hazard, Hart and Clarke, whenever we meet, have something to say of George Rivers. Outside of his profession, he was widely known as a man whose brilliant wit served only to conceal the more solid qualities of his mind. As a lawyer, he had quick perceptions and powers of close reasoning, not surpassed by any of his contemporaries. No man ever tried a case with more skill and ability than George Rivers, but he had not a large clientage. For the routine work of the profession he had neither taste nor talent. The late Judge Curtis once said to me: 'I consider the ability to sit still in an arm-chair as an important factor in the make-up of a successful lawyer.' Rivers had not this ability, and many of the admirers of his genius, his eloquence and his wit passed him by, and trusted their professional business to some one of the less brilliant men who always abound, and who are very apt to succeed. The steeds of Apollo will not work quietly at the plow, and wise men who desire to have their fields well plowed will look about for more quiet animals.

If we do not inquire wisely when we ask why the former days were better than these, it is still lawful to note some points of difference between the past and the present times. When I came to the bar only one lawyer had ventured to take an office on the third floor of a building, and this was Richard Ward Greene, whose standing was such that his clients would follow him wherever he might go. I am writing in the fourth story of a building, and look across the street upon the office of my classmate, George

H. Browne, on a level with me in another building. At this time, General Carpenter added a small consultation room to his office and covered its floor with an ingrain carpet. This event made some talk, and when soon after Hazard & Jenckes fitted up their office with a Brussels carpet and expensive furniture, it was visited for some time as a curiosity. To-day the offices of many of the profession are handsome and well-furnished rooms. Then every lawyer did his own errands or had them done for him by his students; now, many of the profession converse with each other, and with the officers at the court-house, by telephone. Then the headquarters of the profession were in the old wooden building at the corner of College and South Main streets; now lawyers are to be found in large numbers in many buildings in different parts of the city. Then at the call of the docket nearly the whole bar would be present in a room of moderate size, and from the youngest to the oldest all knew each other. When I last attended the call of the docket in the Supreme Court, the large room was crowded with lawyers, only three or four of whom started with me in the profession, and the greater number of whom were the rising men of a new generation.

When I first took an office in College street, across the way, in Whipple's building, were John Whipple, Edward H. Hazard, Thomas A. Jenckes, Henry L. Bowen, Charles Holden, Walter S. Burgess, John B. Snow, George F. Mann, Samuel W. Peckham and William J. Pabodie. On the same floor of the building, just above, were Albert C. Greene and William

H. Potter, Peter Pratt and Edward D. Pearce. In the little building next again above, which for many years had been occupied by Thomas Burgess, was John M. Mackie, who soon after left the law for the more congenial pursuits of literature and fancy farming at Great Barrington, Mass. On the corner of South Main street and Market square, were Levi C. Eaton, Peres Simmons, Gamaliel L. Dwight and Levi Salisbury. In the Mallett building, on South Main street, were Richard Ward Greene and James M. Clarke. In the old building where the Merchants Bank now stands, were Charles F. Tillinghast and Charles S. Bradley. John P. Knowles was then with General Carpenter, at the 'Turk's Head.' I think Mr. Atwell had then no office in the city, but soon after took one on College street. There were other lawyers, as Samuel Ashley and Samuel Currey, whose offices I cannot now locate, and still others, whose names even I do not now recollect. I have been told that not many years before I came to the bar, it was the custom of the lawyers to have a supper together at the house of some one of their number, once or twice in the year, but the members of the bar are now too numerous for such gatherings.

V.

Early Justice Courts and the Court of Magistrates—One of the Old Leaders of the Bar.

Much of my earlier practice was before justices of the peace, and some of my cases I remember. A large, good-natured man who kept a grocery shop in a country town, had been convicted of selling liquor without a license upon the testimony of some boys. These boys had been hanging about his shop, and would occasionally eat an apple from the large piles lying about, but without any concealment, as is the custom of boys in country shops, in the apple season. The keeper of the shop caused these boys to be prosecuted for theft, and I was called upon to defend them. It was quite evident that the boys had taken and eaten the apples, but in the presence of the shopkeeper, and I contended that there was an entire absence of proof of criminal intent. The justice was a professional man; I am not certain whether he had been at college, but he had been somewhere at a feast of languages and had brought away some of the scraps; he drew himself up and said, with much dignity: 'I must find these boys guilty; *ignorantia legis neminem excusat.*' Again, when I appeared before this magistrate in a civil cause, where I had, as I supposed, a good defense for my client, he announced his decision for the plaintiff. With much energy I called upon him to give his reason for his decision. He was par-

tially drunk at the time, and after some hesitation said: 'Well, then, I will give judgment for the defendant.' These are illustrations of what was then known as 'the single justice system,' that is to say, when a single justice of the peace had a limited jurisdiction to hear and determine civil and criminal causes. The abuses under this system were frequent and annoying. The plaintiff could select his court, and was pretty certain of a judgment in his favor.

The headquarters for the administration of justice by these magistrates, in the city of Providence, was in Whipple's building. Henry G. Mumford was surveyor of highways and city marshal. He was a dignified gentleman who wore always a blue dress coat and a white cravat; he drove about the city in a convenient old buggy drawn by a large white horse, and he and his equipage were better known than are any of the elegant turnouts of the present day. It was his business every morning to bring delinquents from the watch-house to the office of Henry L. Bowen, Esq. Mr. Bowen was a lawyer of no mean ability, a 'Henry Clay Whig,' and a pronounced Unitarian. He would rise of a summer morning at four o'clock, and after milking his cow and working an hour or two in his garden would come down to his office at nine o'clock, cool and comfortable, in a linen roundabout, to meet Mr. Mumford and to administer justice. After disposing of the cases that were brought before him, he would seat himself comfortably in an easy chair and read himself to sleep, as is the custom with early risers, over a volume of Dr. Channing's sermons. Meantime, very frequently, the parties who had been

fined in Mr. Bowen's office would cross the entry and get out cross-warrants from Charles Holden against the complainants, who would in their turn be fined, and thus, in many cases, substantial justice would be done. It was not easy for parties, without some guidance, to get past the respective offices of Messrs. Holden and Bowen; but Mr. Edward H. Hazard, whose office, in the second story of the same building, commanded a view of Market square, could frequently, by the aid of a friendly constable, get an opportunity to vindicate injured innocence and punish injustice. Indeed, on one occasion, to reach substantial justice, he announced his intention to 'resolve the law into its original elements.'

Not long after this, in order to remedy the evils of the system, the old Court of Magistrates was established in Providence. This was a remarkable tribunal. In order to secure the passage of the law creating it, it was necessary to give places on the bench to some of the justices of the peace who had been accustomed to do much of the civil and criminal business in the city. The court was composed of seven members: Israel G. Manchester, a respectable trader, whose place of business was on High street; Barzillai Cranston, the well-known bookseller; Henry L. Bowen, Walter W. Updike, Francis E. Hoppin, Charles Hart and myself. Charles Hart was elected clerk, and I was chosen presiding justice. We held our sessions in the old 'Town House,' and before us came, as leading counsel, George Rivers and Edward H. Hazard. The numbers of this court were reduced, from time to time, until its jurisdiction was confined

to a single justice with a clerk. Some of the justices who have presided in that court have had no superiors in the judiciary of this State; among them were Francis E. Hoppin, James M. Clarke, John F. Tobey and John R. Randolph. I do not forget Horace A. Manchester, who held the office under the Democratic administration of Philip Allen. Mr. Manchester was a partner of a son-in-law of Mr. Atwell, and, under the instruction of his senior partner, had become an excellent special pleader; his kindness and generosity made him a great favorite among his brethren of the bar.

I am not writing memoirs of the Providence bar; I am only telling such incidents as come into my memory as I write. I shall rarely allude to those now living, and of those of whom I shall write, I profess to give nothing more than the impressions they made upon me. I am too old to put much confidence in any attempt to analyze the character of another man. 'We are not wise judges of each other.' With this explanation, I shall set down such things as have interested me, and may, perhaps, amuse, if not instruct, those who may choose to read them.

When I came to the bar, John Whipple was its leader in this State. He had gained the position in contests with such men as Nathaniel Searle, Tristam Burges and Daniel Webster, in the courts of this State and in the Supreme Court of the United States. A very good judge, who heard the arguments of Mr. Whipple and Mr. Webster in a celebrated case in this State, told me that he thought Mr. Whipple was quite the equal of his great antagonist, and Mr. Webster is

reputed to have said that John Whipple and Jeremiah Mason were the two ablest opponents he had ever met at the bar. It was in the case referred to that Mr. Webster commenced his reply to the eloquent appeal with which Mr. Whipple closed his argument, with: 'Gentlemen of the jury: there is a saying in the East that truth is a pearl of such priceless value that it can be fished for successfully only in calm waters.' I was early associated with Mr. Whipple as junior counsel in an important case, and had a good opportunity to observe his mode of preparing a case for trial. He was resting upon his laurels and was disposed to give just as much attention to a case as it required, and no more. I, on the contrary, had only this one case to attend to, and no doubt annoyed him by frequent demands on his attention. We had to make out a charge of fraud, and I urged upon Mr. Whipple the necessity of looking up some evidence. 'What evidence do we want?' said Mr. Whipple; 'the man's great-great-grandfather was a thief, and the propensity has come down in the family, from generation to generation, until this man is incapable of an honest impulse; you can see that by looking at him.' But for all this he gave me the necessary directions. We procured sufficient evidence and won our case.

Mr. Whipple, at this period of his career, at any rate, was quite above the clap-trap of pretending an interest which he did not feel. Every lawyer knows that during the progress of a trial much irrelevant testimony is produced and much time wasted in 'threshing old straw' in the tedious examination and cross-

examination of witnesses. While this is going on, one lawyer will write a letter or read a newspaper, or talk with some friend at his side, while another will diligently take notes alike of important and unimportant matter. Mr. Whipple belonged to the former class. Once when a trial was proceeding, his client reminded him that he was not attending to the case. Not perceiving that this suggestion produced any effect, he said sharply: 'Mr. Whipple, how much do you intend to charge me for the trial of this case?' 'I don't know,' replied Mr. Whipple. 'I am building a boat, and when I get the bills in and find out what it costs, I will let you know the amount of my fee.' He would frequently, in the course of an argument, such was the activity and fertility of his mind, indulge in a line of remark quite foreign to the precise issue in the case. On one occasion he commented very freely upon the incredible character of some of the statements in the Old Testament, unmindful or careless of the fact that there some deacons on the jury. He was followed by Richard Ward Greene, who took advantage of this imprudence, commencing his reply with: 'Gentlemen of the jury: you can form some idea of the correctness of my brother Whipple's notions about law and evidence when you hear what he has to say about our holy religion.'

VI.

Trials in 'Dorr Times'—Judge Story—John Whipple—His Early Retirement—Change in the Mode of Practice.

During the troubles which pass under the name of 'the Dorr War,' a party of Dorrites fell in with a party of 'Law and Order men,' treated them roughly, and perhaps deprived them of some articles of personal property. Under the excitement which prevailed at the time, these men were indicted for highway robbery. They employed Edward H. Hazard to defend them, and he selected John Whipple for his associate. When the jury was called, it was known that some of the number sympathized with the Dorr party, and others were very positive 'Law and Order men.' Mr. Hazard said to his associate: 'Abuse these Dorrites as much as you please, but convince these Law and Order men that this is not highway robbery.' This was a line of argument entirely agreeable to Mr. Whipple's convictions. He had a thorough contempt for Dorr and his party, and all their theories of government, and all their conduct, but he was too large a man not to see the distinction between the acts of the defendants and highway robbery, and he despised with all his heart the party bigotry which had procured the indictment. His argument was a torrent of invective and reasoning which swept everything before it and secured a verdict of acquittal.

In the case of Luther vs. Borden, Mr. Whipple

was counsel for the State, and as he rose to make his closing argument in the case, Judge Story called him to the bench and whispered something in his ear. The face of Mr. Whipple indicated his displeasure at what had been said to him, and he commenced his argument with: 'Gentlemen of the jury: I had intended to present to you my view of this case, but the judge tells me that he wants to leave by the next train, and that he will take care of the cause of the State. I shall ,therefore, be brief.' He was brief, and the judge did take care of the cause of the State. About the learning, the general ability and the integrity of Judge Story, there is no difference of opinion, but he was a much-speaking judge, and therefore no well-tuned cymbal. He could not deny himself the pleasure of talking on the bench or off of it; he interrupted counsel, and in his charge to the jury he always made it clear how he thought the case ought to be decided. These are bad habits for a judge, and in a man of less ability would have been very mischievous. Judge Story was essentially a partisan; he was a fervent Democrat in his youth, and an equally fervent Conservative in his manhood. He is reported to have said that he should think very little of a young man who was not a Democrat, and very little of an old man who was.

These anecdotes of Mr. Whipple reveal one side of his character, but do no justice to his great powers. No description of him as a lawyer can do him full justice. In that profession there have been many great men, and there are occasions when it calls for the exercise of the highest powers of the human

mind, but these occasions are rare. In the ordinary walk of the profession, mediocrity insures and deserves success. Industry, sound judgment and zealous fidelity to clients, whether the case be good or bad, are the qualities required. Mr. Whipple had faculties not required in the ordinary work of his profession. He was a student of history, a profound thinker on all social, moral and political questions. He belonged to the school of Hamilton, and had no confidence in that of Jefferson. When I come to my reminiscences of politics and politicians in Rhode Island, I shall endeavor to give Mr. Whipple his proper place among the distinguished men of his generation.

I well remember the morning when Mr. Whipple came to his office, in the same building with mine, and said: 'I am going to sell my law library and retire from the practice of the law.' In this, I think, he made a mistake. He was then about sixty years old. I have not observed that men who retire, while in the full possession of their powers, from active business or professional occupation, promote their own welfare by the change. Mr. Emerson said that to preserve the faculties fresh with advancing years, one must live in close contact with nature, study facts, and read new poetry, by which, said he: 'I mean old poetry which is new to the reader.' I should add to these: 'Keep up intimate relations with young people.' This is not always easy, for the young people are too much absorbed in their own affairs to pay much attention to the old generation, but with a little effort it may be done. Mr. Whipple gave as his reason for a withdrawal from the active

practice of the law that he was surrounded by a new generation of lawyers, and he did not like their mode of doing business. I think I understand what he meant. Judge Pitman told me that before Mr. Webster came to Boston, lawyers opposed to each other would consult together and find out the points on which they differed, and so make the trial of causes simple and easy; but when Mr. Webster came, he broke this up, saying: 'Let us take care of our side of the case, and leave the other people to manage their side.' Something like this custom prevailed among the members of the bar in this State, and it no doubt, in some respects, made the practice of the law easy and pleasant.

But not long before Mr. Whipple retired, what I may call the 'Devil-take-the-hindmost' practice had come in. This change was largely due to one man. Thomas A. Jenckes, from the start in his profession, took the control of all the litigation which he had anything to do with. He did not lean upon associates nor fear opponents. He made his own disposition of his forces, and did not declare his strategy to the enemy, and he usually found, without much difficulty, the weak points in the position of his adversary. In this he received important aid from his partner, Edward H. Hazard. Not long after this, General Carpenter died, and his surviving partner, Benjamin F. Thurston, pursued the same line of practice that had been introduced by Mr. Jenckes. I am not prepared to say it is not the best line. Chief Justice Tighlman, of Pennsylvania, said to a very candid lawyer who commenced his argument by

conceding point after point: 'You may as well take your seat; you have conceded away your case half an hour ago.' Probably the course adopted by Mr. Webster, Mr. Jenckes and Mr. Thurston would in the long run tend to promote a thorough trial of causes, and to secure the prompt administration of justice. I have known much trouble, delay and expense to result from lawyers on opposite sides attempting to make things easy for each other. Mrs. Brattle's rule in playing whist was to observe the rigor of the game. I think this is a good rule in the practice of the law. It by no means excuses dishonest tricks; it merely requires thorough and careful preparation, and it avoids all wrangling as to what has and what has not been agreed to.

VII.

JONAH TITUS — JUDGE DAVID DANIELS — JOHN H. WEEDEN.

Many of our citizens will pleasantly remember Jonah Titus. During his active professional life he lived in Scituate; but for many years before his death his home was in this city, and any one who noticed him as he passed along our streets will understand the sentiment proposed in his honor by George Rivers, on occasion of the nomination of Mr. Titus for the office of attorney general under the People's Constitution:

'Jonah Titus, attorney general of the State of Rhode Island;

> 'Though rolling clouds about *his* breast are spread,
> Eternal sunshine settles on *his* head.'

With much less appropriateness, as it seems to me, this quotation was applied to Charles Sumner by Mr. Curtis in his oration before the alumni of Brown University.

Mr. Titus was a large man, and his very large head, fringed with auburn hair, and his shrewd and genial face, suggested perpetual sunshine, and a close acquaintance with the man revealed the sunshine of his nature. He had a well-balanced mind, estimated men and things at their true value, courted no man's favor, and feared no man's opposition. He went through the world standing on his own feet, undisturbed by the sham and nonsense which prevailed around him. He was excellent company. As a law-

yer, he had sound judgment, sufficient learning, and absolute fidelity to his clients. He seldom, if ever, conducted his own cases in court. During the life of General Carpenter, Mr. Titus selected him for his associate; after the death of General Carpenter, he usually leaned upon George H. Browne for the trial of his cases in court, although once or twice he did me the honor to select me for his associate. But I think his associates always found Mr. Titus fully equal to the preparation of his cases, and that his suggestions as to their management were sagacious, prudent and almost invariably successful. While in the full vigor of manhood he acquired a fortune ample for his moderate wants; and he had that which should accompany old age, including troops of friends. During our civil war he was at one time tempted to apply for a treasury permit to trade in cotton. He desired some recommendations, and as I held an official position at the time, he applied to me. I wrote a letter speaking in just terms of his ability, his integrity, and his high professional standing. He read it over carefully, and said: 'That is all very well, but considering what I am after, perhaps it would be just as well to add a little something about my pecuniary responsibility.'

Not long before his death, when coming down College street in the early morning, with his market-basket on his arm, he was accosted by a woman, who, as he supposed, required some professional assistance. Leaning down with his usual courtesy to catch her words (for he was hard of hearing), he found that she was soliciting alms. Straightening himself up, he

said, kindly: 'Madam, you have made a mistake; you don't want a lawyer, you are looking for a philanthropist.' I have known many men who made more noise in the world, but very few who were more respected or more truly respectable than Jonah Titus.

But how shall I describe another lawyer whose home and office were in Woonsocket, but who had a large practice and was a constant attendant upon the courts in this county. There are some men whose lives seem to run in a strong, deep current, quite undisturbed by their ordinary avocations, however prominent, pressing or useful. Such a man, I think, was R. M. T. Hunter, of Virginia, whose public life and duties always seemed to me to occupy a very small part of the man. Such a man, I am sure, was Lord Melbourne, who had to be reminded that it was a thing of some importance to be Prime Minister of England. Such a man, strange as it may seem, was Lord Beaconsfield; it was his strong nature, running far below the glitter and show of his public performances, that secured him his wonderful support and made him the only rival of Lord Melbourne in the affections of the Queen. Such a man here in Rhode Island was Judge David Daniels. He discharged the duties of a lawyer in full practice, with ability and fidelity; but they never seemed to occupy much of his thought. While waiting in the court-room for his cases to come on, he seemed to take in everything that was going on around him, and at the same time to allow his thoughts to dwell on other scenes and upon other subjects. When engaged in the trial of a cause, he gave it all necessary attention, but with-

out any fuss or pretense of more zeal than he really felt.

On one occasion he was called upon to defend a deputy sheriff who had called to his aid a bull-dog to assist him in arresting a defendant against whom he had a writ. The facts, as they appeared on the trial, were: that while the deputy was reading the writ, the defendant undertook to run away, and the dog was called upon to stop him. This he did by seizing the man by the seat of his trousers, doing no possible harm to the man, and very little, if any, to his trousers. The counsel for the plaintiff had an excellent opportunity for an eloquent appeal to the jury. His client had been defeated in an attempt to sneak away from an officer of the law, and suffered no damage and met with no success. Nothing furnishes so good an opportunity for the display of forensic eloquence as the discussion of a great principle, entirely disconnected from anything of practical importance. It is very clear that a bull-dog ought not to be a deputy sheriff. This is the principle; but in the case in hand, the bull-dog had done no harm. The counsel for the plaintiff, therefore, had nothing to do but enforce the great principle, and this he did, with much zeal and eloquence. Judge Daniels said, in reply, that he did not deny the great principle contended for. He would by no means approve of the selection of bull-dogs to serve writs of arrest, as a general rule; but in this particular case it would seem that the dog had proved a very efficient aid, and that he had kept himself strictly within the limits of his commission. He went on for five minutes in a vein of quiet humor,

quite too delicate for an ordinary court-house audience, but which Charles Lamb would have enjoyed and would have been glad to imitate. As I remember, the jury vindicated the great principle by a verdict for the plaintiff for nominal damages.

Judge Daniels retired one evening in his hotel in this city, and thenceforth we missed him in these lower courts. Let us hope that when he awoke he was greeted with good morning in some happier clime, where Woonsocket litigations vex the air no more. His son, Francis A. Daniels, was a member of our bar, and early gave proof that he had the ability and the generous qualities of his father. His early death was much lamented by a large circle of friends.

John H. Weeden was a constant attendant in court. He came from Pawtucket. Some of us remember his deliberate step, his neat apparel, his ample overcoat with a broad fur collar, his solid cane with the ivory head, his green satchel with papers legibly written, and carefully arranged and filed. He was a lawyer of the old school, industrious, honest and faithful; always courteous, but holding his opinions on all subjects with a confidence indicating that they had been formed after careful study and reflection. I have been told that when a young man and a member of the General Assembly, he gained much reputation as the author of a report from a committee of which he was chairman. When I knew him he was among the older members of the bar, and was highly respected for his integrity and ability. He had a way of taking depositions in divorce cases

which amused me. Joseph T. Sisson, of happy memory, was the magistrate whom he selected. Having placed Mr. Sisson in a comfortable chair, with paper before him, Mr. Weeden would take a seat by his side and remark: 'You need not take down the question.' Then he would address the witness and (avoiding a leading question by saying, 'Whether or not you,' etc.,) would proceed to state, in a clear, narrative form, what he expected the witness to swear to. To this question the witness would reply, 'Yes.' Mr. Sisson would then write down in a narrative form the statement which Mr. Weeden had put in form of a question, and it would come before the court as the testimony of the witness, and in a much more intelligible form than if the witness had undertaken to give it himself. This is a very good way of taking depositions, where both the lawyer and the witness are honest. I notice that Governor Bourn suggests that the witnesses in divorce cases be examined in open court. This may be a very good suggestion. Add to this a provision that two judges at least should be required as a quorum to hear and decide divorce cases, and that the court should, in its discretion, have power to examine the parties on oath, and the abuses of our divorce system would to a great extent be avoided.

Mr. Weeden once prepared an elaborate brief in a case in which I was counsel on the other side. As he rose to address the court, the following discussion took place:

The Chief Justice—'Mr. Weeden, we have considered this question and made up our minds about it.'

Mr. Weeden — 'I have prepared a brief which I would like to submit to the court with some remarks.'

Chief Justice — 'We don't want to hear you.'

Mr. Weeden — 'Then I have no desire to be heard.'

Soon after I met Mr. Weeden in the lobby of the court-room and said to him: 'The court were rather short with you this morning.' He said: 'Yes. I have made up my mind to make the practice of my profession very easy during the remainder of my life. I find that when this court is with you, there is no need of saying anything, and when they are against you, there is still less.'

For many years before his death Mr. Weeden was withdrawn by illness from active professional life, and when the news came of his death, his old friend, Judge Potter, adjourned the court, out of respect to his memory, and to enable those at the bar who had been his friends and associates, to attend his funeral.

The men whom I have mentioned in this paper were not on the list of what are called great men, but they will, perhaps, be remembered as long as some of their more distinguished contemporaries.

VIII.

THE NEWPORT BAR — BENJAMIN HAZARD — ASHER ROBBINS — WILLIAM HUNTER — RICHARD K. RANDOLPH — HENRY Y. CRANSTON — GEORGE TURNER.

It was my misfortune to know very little of the men who made the Newport bar celebrated in the early part of this century. Benjamin Hazard I never saw; he died, I think, in 1840; but I have heard so much about him that I seem to have known him well. He was one of those men who, vital in every part, live long in memory and in tradition. There are those now among the living who could do justice to his character; and the late Professor Goddard, in a few well-chosen words, has left a portrait of him which Rhode Island people will not willingly let die. I read every now and then his great report in defense of the suffrage under the old charter. Like the celebrated paper of Alexander Hamilton in favor of the United States Bank, it is a monument to the patriotism, the ability and the integrity of its author; like that, also, it is a defense of a system which the lapse of time and the change of circumstances rendered an obsolete idea; but it was none the less a system which had the support of able and honest men in a past generation; and it is too early even now to pass a final judgment upon their wisdom and foresight.

When I was in General Carpenter's office, my fellow-student, Charles T. Congdon, edited a free suffrage paper called *The New Age*. A copy of Mr.

Hazard's report was brought to him, with a request that he would write a reply to it. Mr. Congdon had a strong, clear brain, and knew better than most men the strength of his antagonist. He commenced his reply to Mr. Hazard, and, after writing a few paragraphs, walked up and down the office and returned to his work. After another half hour, he took another long walk up and down the office, and, returning to his table, took the report of Mr. Hazard and his own unfinished article, and putting them both into the stove, made some very emphatic remarks about the folly of asking him to reply to such a paper as that.

I saw Asher Robbins only once. He was then an old man and a member of the General Assembly, and I heard him make a speech there. And when, recently, I read in the life of Lord Lyndhurst how, at nearly ninety years of age, he stood up with difficulty, holding on to the railing in front of his seat, in the House of Lords, and made one of the greatest intellectual efforts of his life, I was reminded of the appearance of Mr. Robbins on the occasion I refer to. His subject, as I remember, was: 'The internal commerce of the United States; its vast extent and importance when compared with its external commerce.' His clear, strong intellect was in marked contrast with his feeble frame, and before he concluded his speech, he asked leave to sit and rest for a moment. Some member kindly proposed an adjournment. Mr. Robbins indicated his dissent. Thomas A. Jenckes, who was standing beside me, and had an artist's eye in such matters, said to me: 'He has no

idea of having the symmetry of his speech destroyed by dividing it between two sessions of the Assembly.' Mr. Robbins soon rose and finished his speech, and I never saw him again. I suppose no more classical or cultivated mind ever adorned the forum of his native State or the Senate of the United States than was that of Mr. Robbins.

When I was a student, I saw a prospectus for the publication, by subscription, of a translation of the orations of Demosthenes, by Mr. Robbins; but the work was never published. I risk little in saying that the great orator of Greece would have found in his translator a kindred spirit. Nothing in Demosthenes or in any orator, surpasses in beauty and felicity of thought and expression the address of Mr. Robbins to Daniel Webster, commencing: 'Oh, let him think how poor a thing are all the honors of office, compared with being the chosen theme for the muse of history to celebrate.'

I saw something of William Hunter after he was recalled from his foreign mission. Soon after his return, he made a speech at a meeting of the alumni of Brown University, in which he spoke of his recall, and said that the President of the United States, in very complimentary terms, had decorated the victim which he had prepared for the sacrifice. Afterwards, I heard him speak at a meeting called to raise funds to aid the sufferers by famine in Ireland. In the course of his remarks he made some eloquent comments upon the Lord's Prayer, saying that, in this country of plenty, we could hardly realize the force of the petition for daily bread in lands where people

are suffering for want of food. I heard Mr. Hunter give his testimony before the General Assembly as to the validity of the old State debt, by which he called down upon his head the boisterous fun and blazing wrath of Wilkins Updike. The eloquence of Mr. Hunter in conversation, at the bar and in the Senate, was a topic of common conversation when I was a young man.

Richard K. Randolph was a grand specimen of a Virginia gentleman, transplanted and taking a deep root in the congenial soil of Rhode Island. I do not remember to have seen him in court, but I had frequent occasion to observe him in the General Assembly, when I was reporting its proceedings for the Providence *Journal.* He commanded universal respect. In the course of a debate on one occasion, a member imputed some unworthy motive to Mr. Randolph. I can see him now as he rose to reply. He simply said: 'That gentleman does not know me; that is all.' As Mr. Webster said of Mr. Calhoun, nothing mean or low ever came near the soul of Mr. Randolph. I suppose him to have been incapable even of taking into consideration the question whether he would depart a single hair's-breadth from the line of his duty. When his son, John R. Randolph, was trial justice in this city, a rather conspicuous defendant with a strong array of counsel undertook to 'bulldoze' the modest magistrate. The quiet way in which he discharged his duty, apparently unconscious of the attempt to frighten him, reminded me of his father, and I said to myself at the time, 'blood will tell.'

I remember Dutee J. Pearce, though not very distinctly. I do not think I ever heard him speak. I have heard a very good judge say that he resembled our city solicitor, Colonel Van Slyck. If the resemblance in outward appearance held good as to his mental and moral constitution, he must have been a very honest, capable and agreeable man.

When I first attended court in Newport, Henry Y. Cranston and George Turner were the leaders of the bar. Mr. Cranston, with his blue frock-coat, his eyes protected by green glasses, and his fine head of white hair, was a noticeable and courtly figure. George Turner would not, perhaps, attract so much attention, but a careful observer saw in him modesty and conscious strength. They were both good lawyers, but in important cases each usually had an associate from Providence, Mr. Ames, Mr. Whipple, Mr. Atwell, or one of the Greenes. Mr. Sheffield had then come recently to the bar, but even in that early day, when the docket was called, he was able to inform the court what disposition to make of nearly every case. Mr. Sheffield has doubtless many years of useful service left, but he has entered upon the last decade of the three-score years and ten allotted to man, and if I may borrow an illustration from Burke, while the western sky is in a blaze with his descending glory, a new luminary, Samuel R. Honey, has appeared in the opposite quarter of the heavens to rule for his hour, lord of the ascendant. Meantime Francis B. Peckham, modest, learned, capable and faithful, serves his clients with fidelity, and witnesses without envy these shining lights; and my amiable friend,

William Gilpin, undisturbed by their coruscations, keeps the even tenor of his way. Governor Van Zandt, reposing upon his laurels, troubles himself very little about proceedings in court, and only leaves his library when summoned by the people to the public service.

Though always kindly received there, I never felt exactly at home in the courts at Newport. The people there seem to have retained in a remarkable degree the characteristics which distinguished their ancestors in the early days of the colony, and they never seem quite to have reconciled themselves to the peculiarities of the people in the northerly part of the State. Chief Justice Durfee, in his gleanings from the judicial history of the State, has commented very justly upon the refining and conservative influence of Newport upon the people in other parts of the colony. When the late Robert B. Cranston, in the General Assembly, made quite an eloquent speech upon the distinctions to be observed between northern and southern races of men, Fenner Brown, of Cumberland, said that he was happy for once to agree with his friend from Newport. The distinction he had pointed out was very easy to be seen between the two ends of this State.

IX.

General Albert C. Greene — The Jury System — Joseph M. Blake — William H. Potter.

My first personal acquaintance with General Albert C. Greene was at the December term of the Court of Common Pleas, 1842. I was assigned by the court to defend an old man who had been charged with stealing a bag of meal. He had been in jail awaiting his trial for some months. The evidence was rather strong against him. He wore peculiar shoes, and his tracks were found to and from the mill from which the meal was taken. The meal was found in his possession, and he confessed that he stole it. I made an earnest argument in his defense. I reminded the jury of important principles, of which, perhaps, they had before heard, as that a man must be presumed to be innocent until he had been proved guilty; and that it was better that ninety-nine guilty men should escape, than that one innocent man should be convicted. I said that there might be other shoes like those of the prisoner; that some enemy might have taken the meal and put it in his house, and that he might have been frightened into a confession when he was really innocent; and I dwelt with much emphasis upon the long imprisonment which the old man had undergone while awaiting his trial. General Greene followed, and, after saying some pleasant things about

his young friend who had so ably defended the prisoner, called the attention of the jury briefly to the evidence, and after a short charge from the court, the jury retired, and soon brought in a verdict of 'not guilty.' As the old man, surprised at the news of his innocence, was passing out of the court-room, General Greene put his hand upon his shoulder and said: 'My old friend, don't you steal any more meal.' Some fifteen years after this, I met a gentleman on Benefit street who said to me: 'I suppose you don't remember that I was foreman of the jury in your first case.' I said, 'No.' 'Well,' said he, 'we had no doubt about the man's guilt; but he had been in jail a good while, and we thought that he had been punished enough; and as you was a young man, we thought we would encourage you, and so we brought the man in 'not guilty.'

From the time of this trial to the day of his death, I cultivated pleasant relations with General Greene. He was a man to be loved and respected; to good natural abilities he joined thorough training in his profession, and while with competent learning he discussed questions of law, his great strength lay in presenting questions of fact to a jury. He was preeminently a jury lawyer. In his treatment of witnesses, associates, opponents and the court, he was the soul of courtesy and honor. His argument in the Avery case is often referred to, and was, no doubt, a masterpiece. Jeremiah Mason succeeded in raising a doubt in the minds of the jury, but those who read at this day the argument of General Greene, even without the aid of his persuasive manner, never cease

to wonder how the doubt could have risen. When I say that he was pre-eminently a jury lawyer, I seem to myself to give him the highest rank in his profession. The ability to win verdicts from the jury is quite equal to that of getting judgments and decrees from the court. In these days we hear much about the defects of trial by jury, and various efforts are made to suggest improvements in the system. General Greene said to me, near the close of his life: 'I have never known any great injustice done by a jury in Rhode Island.' After forty years' observation I am disposed to agree with General Greene. Some verdicts there have been set aside as against the law and the evidence, some disagreements there have been when a strict construction of the law and the evidence would have justified a verdict; but in all these cases I have been able to see a reason for the course pursued by the jury. If a cashier is indicted for embezzlement, however clear the evidence may be against him, I do not think any great harm is done if the jury refuse to convict when it appears upon the trial that the directors of the bank, or some of them, participated in or winked at the conduct of the cashier. And even in cases where there are complicated questions of fact, and where there is room for difference of opinion, I think a jury is quite as likely to come to as correct a conclusion as the court. I have known three cases in which the court has exercised its power to order a new trial unless the plaintiff would remit some portion of the damages awarded by the jury. One case was in the Circuit Court of the United States in this district, and two in the Supreme Court

of this State. In each case the decision was by judges eminent in ability and integrity, and in each case the decision was wrong and did great injustice.

While writing these papers I notice that the Commercial Club has invited some lawyers to speak to them upon the mode of selecting jurors in Rhode Island. I don't know what are the defects complained of in the present mode, or what changes are proposed, but perhaps the General Assembly are as little likely to do mischief by turning their attention to this subject as to any other; and possibly they may derive valuable aid from the Commercial Club and the bar. But, for my part, I think the present mode of selecting jurors answers its purpose very well. In fact, I have little sympathy with the tendency, which I notice in magazines and elsewhere, to find fault with the trial by jury. In the machinery for what is called the administration of justice, but which is more properly described as the decision of controverted questions between private parties and between citizens and the government, that part of it that least needs repair is, in my opinion, the jury. That machinery is composed of the court, the bar and the jury. When the case is properly prepared and presented by counsel, and the court gives proper direction, I think juries rarely make mistakes in their verdicts; and when they do, the mistakes can always be corrected. But I have frequently noticed that counsel have failed properly to prepare and present the case, and, with the best intention, the court frequently fails to give the proper directions, and for these defects there is often no remedy. The ablest lawyer is very apt to see, after

the trial is over, that he has done something which he ought not to have done, and left undone something that he ought to have done. A judge is but a lawyer removed from the bar to the bench, and the best lawyers will be the most charitable critics of a charge which the court is obliged to give, after a long trial in a complicated case.

There is one defect in the working of our jury system which is frequently complained of, but not, I think, for the right reason. Prominent men, men engaged in active business, are apt to get excused from jury service, or to neglect to serve, and pay the small fine that is imposed for such neglect. As a rule, I think, the men who are not excused, and who do not neglect to serve, are quite as competent to perform the duty. It does not follow that a man who is engaged in a large business is more competent to give an intelligent verdict upon a question of fact than a man whose occupations are less engrossing. But by failure to attend court and perform jury duty when summoned, he loses opportunities of getting much instruction as to the mode in which business is conducted in the court, and exposes himself to the risk of making much foolish criticism of judicial proceedings in insurance offices and other places where merchants and business men most do congreate.

After serving the State as attorney general for eighteen years, General Greene retired from that office and gave place to Joseph M. Blake. When, soon after, the Gordons were indicted for the murder of Amasa Sprague, Governor William Sprague retained General Greene to assist the attorney general, expect-

ing, no doubt, that General Greene would be allowed to make the closing argument for the State. Mr. Blake, the attorney general, was then a young man, but he very properly said: 'I have been elected by the people to this office, and I shall not, by any act of mine, admit that they have made an improper choice. I shall close the case myself.' General Greene's partner, William H. Potter, himself one of the ablest lawyers in the State, and who afterwards rose to leadership at the bar and enjoyed the confidence of a very large clientage, opened the case for the prosecution. Mr. Potter still lives, and enjoys the confidence of his old clients and the people of the State, though for many years the condition of his health has withdrawn him from the active practice of his profession.

General Greene, while in the prime of life, accepted a seat in the Senate of the United States; and after his retirement from the Senate, resumed the practice of his profession. No man was better known in the State than General Greene, and all who knew him, so long as they survive, will remember him with kindness and regard, and the tradition of his eminent merits as a lawyer and as a man will be handed down to another generation.

Some ten years after the death of General Greene, I had occasion to take the deposition of a very old man, who for a long time had been confined to his house, and who apparently had not taken the trouble to read the newspapers. After giving his deposition, he asked me some questions about lawyers and the court, and added: 'I have not been to the court-

house for a good many years; but I always used to go when I heard that General Greene was to speak; and if I should hear that he was to speak now, I think I should try to go and hear him. I suppose he is still attorney general!'

X.

Benjamin F. Latham — His Studies — Admission to the Bar and Practice.

One morning, General Carpenter introduced to Charles T. Congdon, Walter W. Updike and myself, Benjamin F. Latham as our fellow student. The young man bowed. General Carpenter handed him a book; he took his seat at the table and began to read. He took no notice of the conversation, and kept on reading until it was time to go home, when he took his hat and left the office without saying a word. The next morning he came, resumed his reading, and at the same time in the afternoon as the day before left the office in the same way. Upon inquiry we heard that he lived with his father in Johnston. His father kept a small store in the village of Triptown. After some days we drew our fellow student into conversation. Latham understanding that Congdon occasionally had written poetry, remarked that the 'Lady of the Lake' was the greatest poem that was ever written. When I made this statement in the presence of Mr. Amos Perry, he said: 'That is just like Latham; he never could have but one thing in his mind at a time, and when he was thinking of the 'Lady of the Lake' he would entirely forget that he had ever seen or read any other book; but there can be no doubt that he

had been a great reader all his life.' Latham entered his name as a pupil of Mr. Perry at an early age, and his old teacher knew him very well, and has many pleasant recollections of his distinguished pupil. He could make an interesting paper about him for the Historical Society, and I hope that at some time he will do so. But I must confine myself to my own recollections. Latham said he knew the 'Lady of the Lake' by heart. Updike asked him if he would be willing to recite it. He said he would, and taking his stand at one end of the office began his recital, and for aught I know would have continued to the end if Updike had not told him that he was satisfied that he could do so, and that he would excuse him from proceeding further. He at once took his seat and resumed his law book.

I asked him what he thought of Shakspeare as a poet. He said he had never heard of him. I handed him a volume containing all the plays and poems. He asked if he might take the book home with him, and reported next morning that he had read two plays during the night and had made an abstract of them. He showed this abstract to me. The abstract was very correct, and made very much as one might abstract a census report. In this way he went through the book, night after night, until he had finished all the plays and poems. One day he told us that he had commenced writing a book on 'Moral Philosophy.' He said that there had never been any book written upon that subject. We handed him Dr. Wayland's work. He took it home with him and reported the next day that it proceeded upon a wrong

principle. He said that the foundation of moral philosophy was the fact that, in the nature of things, there could be no proof of the existence of a God. He seems to have anticipated the agnostics of the present day.

After spending some months in General Carpenter's office, Latham went to the Cambridge Law School; while there, being obliged to make his expenses as small as possible, he contrived to get the privilege of taking care of the room in which was the law library, keeping it in order, I mean, making the fire, etc.; there he devoured law books in the most extraordinary manner. I have seen letters written by him to his father, giving an account of his reading, which would make the head of an ordinary law student swim. Of course Judge Story found him out and sounded his praise. Leaving Cambridge, he took a notion to finish his law studies in Germany. Leaving Providence on the steamer for New York, he engaged his passage in a German sailing vessel and carried his trunk on his back from the boat to the ship, and while on the voyage he made some progress in learning the German language. While in Germany he neither drank beer nor smoked, but attended lectures and brought home with him from German professors certificates of his attainments there, couched in very complimentary terms. After finishing his studies in Germany, he made his way to Rome and obtained an interview with the Pope. So far as I know, he took no notice of anything else in Rome. He then made his way to London, and there had some professional cards printed, because, as he

told me, the printing could be done more cheaply there than in Providence.

Returning, he arrived in Providence by steamer from New York, and came early in the morning to my office. He said he wanted to be admitted to the bar. I told him that it would be necessary to have a bar meeting, and in order to give the proper notice it would be necessary to wait a day or two. He requested me to have the meeting called for that day, at twelve o'clock. He undertook to serve the notices himself, and did so. At the meeting his credentials from General Carpenter, the professor at Cambridge and the German professors were presented, and he was recommended for admission to the bar. As the meeting broke up and I came out of the room, I found Latham at the door, anxious to know the result. He had not shaved since he left Providence for Germany, and had a fine beard. I told him that he would be admitted upon the condition that he would cut off his beard. He had no notion of the joke, and, at the opening of the court in the afternoon, presented himself with a smooth face and was duly sworn in. During the day he hired and fitted up an office, and the next morning the newspapers contained his professional card. Clients came to him in crowds. He lived with his father and walked to and from his office. One day I noticed that he had very coarse-looking shoes and was generally shabby in his dress. I said to him: 'Latham, I suppose you think this kind of thing will bring you clients, but you make a mistake. These people who employ you want to see their lawyer well dressed.'

He appeared the next day in a new suit and nice-looking shoes. He soon had a large docket of cases in court. I have seen lately several allusions to the dæmonic appearance in the eyes of Martin Luther. Latham had the same expression. He went about his work very much as if he felt: 'God help me, I cannot do otherwise.' Such a man as I have described would be likely to make some amusement for his younger brethren of the bar. One day in the court-room he walked up to George Rivers and said in a very business-like way, as if he was speaking about some case in which they were both engaged: 'I think you are making fun of me; if you don't stop, I shall knock you down;' and Rivers stopped.

He was opposed to General Carpenter in a horse case. General Carpenter had recently joined the Roman Catholic church; his client was an Irishman. Latham told the jury that General Carpenter was a hypocrite who joined the Catholic church in order to get Irish business; and this he did without the least appearance of any consciousness that he was saying an unkind or discourteous thing. The calm and undisturbed face of General Carpenter, as he listened, would be a fine study for a painter. When he came to reply, he spoke of Latham as a friend and a favorite student, commended his great attainments, predicted his future success, and, as usual, the General won his case. In another case, Latham was opposed to Charles S. Bradley. Bradley had brought a suit for damages against a telegraph company for injury done to some ornamental trees on the estate of his client. Those who know Mr. Bradley will understand

with what skill and beauty he would enforce a claim of this kind. Latham told the jury that this was all nonsense, and that Bradley knew perfectly well that his client could have no claim except for the value of the trees injured as firewood, which he computed at a very small sum, and, as I remember, the jury, notwithstanding the eloquent appeal of Mr. Bradley, took Latham's view of the matter in their verdict.

The last time that I remember to have seen Mr. Latham, we met on the piazza of the Bellevue House, at Newport, and had a long and pleasant conversation; that is, he talked to me long and well, pouring out information on a variety of subjects. It was a peculiarity of his that he never asked any questions, and never seemed anxious to hear anything, but was always pouring out of a full mind the results of his reading and observation, and never indicated the slightest doubt of the correctness of any conclusions at which he had arrived. On this occasion he told me that he intended to remain at the bar in Rhode Island for ten years from the time of his admission; by this time he said he would have obtained all that any lawyer could get in this State. After that he would go to the city of New York, and in ten years would be at the head of the bar there. Soon after this, and after a very short illness, he died, to the great grief of his father and other members of his family, who were justly proud of his success, and to the great relief, I fear, of some of the younger members of the bar, who found in him a formidable rival. He was, I think, a perfectly honest man. At the

same time it was difficult to comprehend and justly appreciate him. Byron said:

'Nature broke the die in moulding Sheridan.'

I think she did the same in moulding Latham. I never saw but one such man, and don't expect to see his like again.

XI.

TRISTAM BURGES — PERSONAL APPEARANCE — HIS ELOQUENCE AND SCHOLARSHIP — POLITICAL LIFE AND RETIREMENT.

In the summer of 1835, while preparing for college in the pleasant village of Brooklyn, Conn., I read the life of Tristam Burges, by Henry L. Bowen. I do not remember to have seen the book since. Whether it is what is usually called a campaign life, published with the view of the candidacy of Mr. Burges for some office, I do not know. Mr. Bowen was an enthusiastic admirer of Mr. Burges, and it may be that this volume was a spontaneous record of his estimate of his illustrious friend. It would be impertinent in me to say much about Mr. Burges, whose fame is so well established, and of whose personal peculiarities I know very little. I saw him once in the hall of the old Franklin House, addressing a committee, whether of the city council or of the General Assembly I do not now remember, nor do I recall the subject under discussion. I remember the bent figure of an old man dressed in a plain gray business suit, his eyes undimmed and his mental vigor unabated. His manner was calm, and gave no hint of the terrible force which had given him his ascendency in the courts of Rhode Island and in the halls of Congress; but there was a rare felicity in the construction of his sentences, and his elocution was perfect. I had heard nothing like it before, nor have I heard anything to compare with it since, except when listening to

Rufus Choate or Wendell Phillips. On one other occasion I saw Mr. Burges. It was at a meeting of the alumni of Brown University. Henry B. Anthony called him up with this sentiment: 'The bald eagle of Rhode Island: may his old age be as tranquil as his manhood has been glorious.' I thought it was a very graceful compliment; and I think Mr. Anthony seemed pleased with it himself. But it did not seem to strike the old man eloquent so favorably. In his reply, he said, rather cynically: 'I do not claim to be an eagle of any kind, much less a bald eagle.'

On one occasion, when I was reporting the proceedings of the city council for the *Journal*, Mr. William S. Patten, president of the common council, began to read a commication of some kind from Mr. Burges. I think it was a remonstrance against some action which the council proposed to take in reference to some property of Mr. Burges. It was addressed to the mayor and city council, and commenced thus: 'Your worship is a scholar; some of your honors can write, probably all of you can read.' Upon this broad educational basis he proceeded to point out, as I suppose, the enormity of the proposed conduct of the body which he addressed. But the contents of the paper were never publicly made known to the council. The president promptly decided that it was disrespectful, and folding it up, laid it upon the table. What became of it I do not know.

A few years since, I listened to some old men who were gathered from different parts of the country, and resting themselves on benches by the Profile Lake, in New Hampshire. They were telling each

other stories about Tristam Burges, recounting the many brilliant things which he had said. Some of these anecdotes were genuine, and some of them have been floating about the world ever since the time when the Athenians were running about their city hearing and telling some new thing. There could be no better proof of the unique fame of Mr. Burges. There is no surer evidence of a man's pre-eminence in any walk of life than that all the good things said or done in his line are attributed to him.

On one occasion a distinguished lawyer from another State called at my office, and after transacting his business, asked me, if I could show him the house where Tristam Burges lived. This gentleman was a fine classical scholar, spoke fluently in several modern languages, and was familiar with the masterpieces of ancient and modern oratory. On the way to and from East Providence, he talked familiarly of Mr. Burges, recited several passages from his speeches, spoke with enthusiasm of the great reputation which he gave to Rhode Island while he was in Congress, and assigned him a high rank among orators.

I once spent the night with Wilkins Updike, at his house in Kingston. We sat up late by the side of a wood fire, while Mr. Updike talked of the great Rhode Islanders whom he had known. William Hunter, Benjamin Hazard, Asher Robbins, and the rest. I remember well his expression as he turned to me, after a description of Elisha R. Potter, the father of the eminent judge of the same name, whose recent death we all lament, and said with much emphasis: 'I tell you it was a great effort of nature to produce such a man as

that.' I do not think that Mr. Updike liked Mr. Burges very much. He said he had collected the necessary materials to prove that the celebrated attack of Mr. Burges on John Randolph, of Roanoke, was never spoken in Congress as it stands printed in his published speech. But, however this may be, there is no doubt of the fact that the eccentric, eloquent and sarcastic Virginian was made to feel that he had met his master. Mr. Burges was at one time a prominent candidate for the Senate of the United States, and there is a well authenticated tradition that his defeat was the result of political trickery. Mr. Burges felt the defeat very keenly. I have been told that when some one attempted to condole with him, as if it was no great matter, Mr. Burges replied, with flashing eyes and in a voice tremulous, but indignant: 'I can tell you, sir, a seat in the Senate of the United States is a thing not to be despised.' Many men, before and since, in this and in other States, have been of the same opinion, but not every man had his unclouded intellect, his not very patient temper, and his consciousness of power. He knew what an opportunity he had lost. It is very well for a man to think how poor a thing are all the honors of office in comparison to being the chosen theme for the muse of history to celebrate; but in order to attract the attention of the muse of history, a man must have a fair chance.

As an orator, Mr. Burges had a style rhetorical and ornate, quite out of fashion in these days. He followed Mr. Whipple once, in the old town-house, commencing thus: 'Who shall paint after Raphael, who shall speak after Cicero?' It was quite a fashion

at one time for New England orators to predict the ruin of the country. Judge Story, after making the air of Massachusetts vocal in his youth with the expression of Democratic confidence and hope, in his age lifted up a funeral wail, lest the experiment of free government failing here, should never elsewhere be renewed. And Mr. Webster, in his grand way, announced that unless a check was put upon General Jackson, the man was then among the living who would write the history of this government from its commencement to its close. Mr. Burges, depicting with graphic power the calamities which threatened the future of the country, said, in words gathering pathos from his own experience: 'Then happy will the old man be who shall have sheltered his last daughter in the sanctuary of the grave.' Perhaps the happiest period of the life of Mr. Burges was near its close, when, after the fitful fever of ambition was over, he discussed with Father Williams, at his home on the banks of the Seekonk, those questions of life and destiny 'which were propounded at the dawn of speculation, and will remain unanswered to its decline.'

One pleasant afternoon in October a long procession moved through the city to the North Burying Ground to pay the last tribute of respect to Mr. Burges. We talked on the way of his stormy career and of its tranquil close. It was near the hour of sunset when the door of the tomb was closed, and to apply the words of Theodore Parker, speaking of the death of Dr. Channing, to the great Rhode Island orator: 'He and the sun went away together.'

XII.

RICHARD WARD GREENE — HIS LIFE ON THE BENCH AND SUBSEQUENT PRACTICE — THE PREPARATION OF WITNESSES — THREE CLASSES OF CLIENTS — HIS INGENUITY AS AN EQUITY PLEADER.

When I was in college, a tall, fine-looking man with a long stride, wearing a hat with a broad brim, and protecting his eyes with green glasses, was seen every day, towards evening, walking up Westminster street. This was Richard Ward Greene, United States district attorney for the district of Rhode Island. I should like to know if there are any boys now who look upon persons in official position as we boys did then. I should like to know, for instance, if there are any boys in Valley Falls who regard Jonathan Chace with the same reverence as I felt for Andrew T. Judson when he rode by my father's house the day after his election to Congress. I put this as an ideal case, because Mr. Chace deserves such reverence if any man does. His office sought him, and not he the office, and, like Lord Mansfield, he desires that popularity which follows, and not that which is run after. Mr. Greene was appointed district attorney by John Quincy Adams, and held the office during the administrations of Jackson, Van Buren, Harrison and Tyler. When the Whigs came into power, in 1841, Samuel Ames expected to have the office of district attorney, and on political grounds

was entitled to it; but Mr. Greene had never been partisan, and, I think, through the influence of his friend, Mr. Webster, secured a reappointment, and held the office until the inauguration of Mr. Polk, when party lines were drawn, and my friend, Walter S. Burges, deserved and received the office of district attorney, and held the office until the coming in of General Taylor. After the election of General Taylor it was understood that George Rivers would be glad to have the office of district attorney. When he heard that James M. Clarke had received the appointment, Rivers went to the office of Mr. Burges and greeted him with: 'How is the *late* district attorney?' 'Better *late* than *never*, Colonel Rivers,' was the reply of Mr. Burges.

At the time when I was admitted to the bar, Richard Ward Greene had the largest and most lucrative practice of any lawyer in the State. Among his clients were Samuel F. Man, James F. Simmons, Tully D. Bowen, and very many of the leading business men of the city and State. He was, I think, a most admirable counsellor. He had many students, and was accustomed in a pleasant way to point out to them the advantages they would gain by assisting him in the preparation of his causes. Among these students were Samuel W. Peckham, James M. Clarke, Charles Hart, Edwin C. Larned and Wingate Hayes. It will be readily seen that each of these men was capable of rendering important assistance. I have heard Mr. Hayes narrate at great length the labor which he performed in the preparation of some important cases which Mr. Greene was to argue in the

Supreme Court of the United States, and with what emphasis Mr. Greene assured him that he would find the compensation for this labor in the knowledge thus gained, which he could use in his future practice. Edward H. Hazard was also associated with Mr. Greene in some cases argued at Washington, and although the argument of Mr. Hazard was much commended, I have heard Mr. Greene complain that he could not get much assistance from Mr. Hazard in the preparation of cases. He was accustomed long afterwards to make the same complaint of me, when I was associated with him as junior counsel.

After the death of Chief Justice Job Durfee, Mr. Greene was appointed chief justice, with the general approval of the bar and of the people of the State. In accepting this appointment he relinquished a practice worth some eight thousand dollars a year for a salary of seven hundred and fifty dollars and some fees, which did not amount to much. Soon after his appointment it became known that he intended, while presiding in the Supreme Court of the State, to retain his private practice in the Circuit Court of the United States. When he found that this would not be regarded as satisfactory to the bar or to the people, he gave up his private practice and for several years devoted himself to the discharge of his duties as chief justice. While the people and the bar were well satisfied with the manner in which he discharged the duties of his office, I do not think he enjoyed the situation ; indeed, he frankly said that he did not like to transact all the judicial business of the State for a salary of seven hundred and fifty

dollars, while the counsel who were practicing in his court frequently received more than that for the argument of a single cause. He resigned his office and resumed the practice of the law, and soon after I became intimately associated with him, and continued so until he retired from active practice. It happened in this way:

One of his clients had purchased some cotton with a note of a manufacturer, who soon after suspended payment. I commenced an action in behalf of the person who took the note against Mr. Greene's client upon the ground that he must have known when he made the trade that the note of the manufacturer was not good. Before the case came to trial, my client proposed a reference of the case to three merchants, but Mr. Greene advised his client that by agreeing to a reference he would admit that there was some possible ground for the charge against him, and that I must know that my client had no shadow of a claim. This annoyed me, and I determined to win my case if possible. Mr. Greene presented his defense with the utmost confidence and with all the prestige of an ex-chief justice. He said, among other things, that when the exchange of the note for the cotton was made, the manufacturer was perfectly good, but only wanted a little time on account of the low state of the water in the stream upon which his mill was situated. He also read to the jury an opinion of Chief Justice Marshall to the effect that in such trades the buyer and seller must each look out for himself. Now, Mr. Greene himself was a man of substance, and in the habit of discount-

ing commercial paper. When I came to reply for the plaintiff, I drew a picture of what would probably be Mr. Greene's consternation if a proposition were made to him to discount a note of a manufacturer, and on account of the low state of the water to have the note made payable after the next shower. I also dwelt upon the enormity of an ex-chief justice trying to make a jury believe that Chief Justice Marshall encouraged unfair dealing. The result was that my client, greatly to his surprise, won a verdict, and the next day purchased a handsome horse for his son with a portion of the proceeds, the defendant having immediately paid up. I shall not forget the expression with which, when the jury came in, Mr. Jenckes laid his hand upon my shoulder and said: 'Payne, you stole that verdict.' Mr. John P. Knowles, who had enjoyed a hearty laugh during the trial, published an account of the case, which may be found in the newspapers of the day. Mr. Greene's client soon after retained me with Mr. Greene in important litigation which lasted a long time, and a pleasanter client and a more truthful and honest man, I have not met in a practice of some forty years.

I was also associated with Mr. Greene in a controversy between Daniel Brown and James F. Simmons. Mr. Simmons had a mill privilege in Johnston, lying between two mill privileges of Mr. Brown. He flowed out the privilege above his own and cut down the privilege below his own, and then sued Mr. Brown for damages, and recovered a verdict. I suppose it was all right, but Mr. Brown never could understand it. Before the master in chancery, Mr. Greene repre-

sented Mr. Brown, and Mr. Jenckes represented Mr. Simmons. The report of the master was in favor of Mr. Brown, but Mr. Simmons said that Mr. Jenckes did not understand his case, and before the Supreme Court he argued the exceptions himself, and obtained a decree in his favor. Mr. Simmons and his friend, Samuel F. Man, knew all that was to be known upon the law of water power, and had, long before this time, as clients of Mr. Greene, made him the best instructed lawyer in this State on that branch of the law.

I will mention one other case in which I was associated with Mr. Greene, in which I became acquainted with his thorough and careful preparation of his cases. This was a case in which we were bound to make out that a certain instrument in writing purporting to be a promissory note was really not intended by the parties to create any obligation to pay money. This was undoubtedly the fact. Our witnesses were merchants of high standing and character, but if they had been called into court to explain the transaction without previous preparation, I think they would have found it difficult to do so. The witnesses were summoned, one by one, to Mr. Greene's office, and there, day after day, the transaction was fully explained, the testimony of each witness reduced to writing, compared with the testimony of each other witness, and so the testimony of all the witnesses corresponded in every particular, and when each witness was called before the magistrate, he gave his testimony in the exact words of the written statement which he had previously agreed to. This,

Mr. Greene said, was the proper mode of taking testimony, especially in equity cases, and I remember very well that when an eminent lawyer suggested in court that his opponent had had a certain witness in his office before the trial to prepare his testimony. Judge Curtis interrupted him with this remark: 'It was a very proper proceeding. I consider that any counsel who calls a witness without such preparation, if he has an opportunity to make it, neglects his duty.' This is probably true, and where the counsel and the witness are both honest, no injustice will be done.

As a lawyer, Richard Ward Greene had added to natural fitness excellent training for his profession. In this country, where there is no distinction between barrister and attorney, and the lawyer who prepares the case conducts the trial in court, he must have much intercourse with his clients. Mr. Greene made this intercourse very pleasant. There are all sorts of clients. Some who, when they put their case into the hands of a lawyer, take no more interest in it; make no inquiries about it; if the result is favorable, they are content; if unfavorable, they lay all the blame to the lawyer. There are others who make diligent efforts to understand the case, but without the least success. They call upon their counsel in season and out of season, listening to explanations which they do not understand. This class of clients make a good deal of trouble, and almost always dispute the bills of counsel when rendered. There are others who understand all the points of the case as well as their lawyer, and render him all needed

assistance in the preparation for the trial. This class of clients make very little trouble, and pay their bills cheerfully. Such clients were Harvey Chace, Tully D. Bowen, Truman Beckwith and Welcome Farnum. Mr. Greene knew just how to deal with all these classes of clients. To those who neglected their cases he made life very uncomfortable, sending them word from day to day to do this, that and the other thing, never seeming to be in the least fatigued with the labor which he required other people to perform. With the second class he was very patient, explaining over and over again matters which really needed no explanation, and never seeming to be weary, however foolish the questions he had to answer, and never omitting to make a memorandum on his account book of the time occupied in this kind of consultation. From the third class he derived invaluable assistance, and was profuse in thanks, though I do not think he made any deductions in his charges on account of this valuable aid.

Mr. Greene was especially fond of practice in equity causes. When he was young, the State courts had little or no equity jurisdiction, but in the Circuit Court of the United States, Judge Story 'supped up' jurisdiction like a sponge, and Mr. Greene had large practice in that court. Both at common law and in equity, the business of courts is to settle the rights of litigants according to the established law; because these rights cannot be protected in some cases according to the forms of the common law, resort is had to courts of equity. In an action at common law, by a strictly logical process of reason-

ing, a single issue of law or of fact may be reached. In a suit in equity, rules of pleading have grown up from time to time, originally made to meet the exigencies of the particular case, but finally made imperative in all cases, which have no basis either in reason or in common sense. In a recent case in this State, eminent counsel had conducted the pleadings for several years, getting farther and farther each year from anything tending to the final disposition of the case, until one of the most eminent of the counsel exclaimed: 'I wish we could get at the merits of this case; I don't want to be strangled in the network of equity pleading.' Now with all this network, long practice had made Mr. Greene familiar. While no lawyer knew better than he did the merits of the case, very few knew so well how to reach or avoid them by what is called equity pleading. When he had carefully prepared an important cause in equity, in which all proofs had been reduced to writing, and he came to present the case to the court, it was worth any man's while to listen to his argument. He was not a rapid speaker, he was not in the ordinary sense eloquent, but when he had carefully laid out his papers on the table, adjusted his glasses and procured a supply of snuff from his friend the sheriff, Roger W. Potter, it was a pleasure to listen to him. All the weak points in the case of his adversary were exposed, and the strong points in his own case presented with force and apparent candor. He did not usually get much excited, but when the case and his client were both important, he would become very earnest. In one instance, I

remember, he was followed by Mr. Whipple, who said: 'Your honors can see by the manner of Brother Greene that he is earning a large fee; he is like a locomotive whose speed depends on the amount of fuel with which it is supplied.'

Mr. Greene was devoted to his profession. Outside of his professional study, I don't think he read much, and while he had clear and sensible views on all subjects, I don't think he troubled himself much about the political, social or literary questions of his generation. But in his conversation no one could fail to see that in his early days he had made himself familiar with the best English writers. In consultation with his associates he listened with attention to all suggestions, and freely made known to them all his views about the case. He continued in the active practice of his profession nearly to the close of his long life, and had acquired a sufficient fortune. He was a successful man in this, that he accomplished the object which he set before himself upon his entrance into professional life. By his will, after providing for his relatives and friends, he gave the residue of his estate in trust for the benefit of Sunday-schools. Dr. Wayland has somewhere described in eloquent terms how the lines which the great Emperor, Charles the Fifth, drew upon the destinies of Europe were fast vanishing in darkness, while the memory of Robert Raikes, the founder of Sunday-schools, would grow brighter and brighter through all coming time. Possibly when the memory of the trusted counsellor of the merchants of South Water street, and of the chief

justice who found a way to protect the New England Screw Company against the attacks of Alexander Hodges, shall have faded out of the minds of men, the Sunday-school children of the State will remember the name of their benefactor and friend.

XIII.

SAMUEL AMES — THE GREAT CHIEF JUSTICE — HIS SENSE OF JUSTICE AND HONOR — HIS VERSATILITY — KINDNESS OF HEART — CONNECTIONS WITH THE HAZARD AND IVES CASE.

A monument in Swan Point Cemetery bears the following inscription:

SAMUEL AMES.
During nine years Chief Justice of the State of Rhode Island.
Born September 6th, 1806.
Died December 20th, 1865.
Upright, Learned, Fearless, Just, Sincere.

Rarely has an epitaph come so near telling the truth, the whole truth, and nothing but the truth. When a man of mark dies, especially if he be stricken down suddenly in early life or in middle age, there is very apt to be a burst of eulogy which does him injustice by hiding his real merit. This was easily observed in the case of the man of whom we often and justly speak as the Great Chief Justice. I was absent from the State when he died, and as I read in the newspapers what was said about him, I thought that the future historian from these materials would hardly be able to distinguish between this man and any other great lawyer and judge. And yet he was a man who, if truly described, would present a grand historic figure. 'Paint me as I am,' said Cromwell to the artist; 'if you leave out a scar or a

wrinkle, I will not pay you a shilling.' Such directions would Samuel Ames have given to any one who should attempt to speak of him after his death. If his statue were set up at the public expense or by private subscription in the scene of his labors as counsellor and judge, it would give the world assurance of a man. Everything about him was positive and strong. His consciousness of his own great powers made him frequently impatient in dealing with men of less capacity. His own sense of honor kindled his wrath against meanness in every form His sense of justice filled him with anger, both durable and vehement, against every form of injustice. His intellect, powerful and rapid, could ill brook contact with men whose perceptions were dull. His great learning sometimes provoked contempt for men of more limited attainments. Of course such a man, in the discharge of his duties would make enemies as well as friends.

I shall not attempt, of course, any biography of Mr. Ames, or any formal estimate of his abilities, his character or his service to his native State. I confine myself to some of the many things which remain in my memory of him. I first saw him, a young man, on Westminster street. His athletic figure, his elastic step, his careful dress, attracted my attention, and on inquiry I was told that he was first among the rising young lawyers of the State. I next saw him in the old court-room after the candles were lighted in the evening. Chief Justice Job Durfee and his associates, Hale and Staples, were on the bench. John Whipple, Richard Ward Greene, General A. C.

Greene and Thomas F. Carpenter were seated within the bar. Samuel Y. Atwell was addessing the court upon some motion, and probably with quite unnecessary eloquence. Mr. Ames sprang to his feet and stepping forward interrupted Mr. Atwell with: 'May it please your honor: have we not had enough of this rhodomontade?' I think I have heard this word used on no other occasion. I remember well the expression of Mr. Atwell as he turned and fixed his eyes upon his young friend; but he took no other notice of the interruption.

I next saw Mr. Ames at the boarding-house of Mary Ann Smith. Among his fellow boarders were Samuel Currey, Charles S. Bradley, John Oldfield, Edward H. Hazard and myself. While waiting in the ante-room for Mary Ann to announce that our meals were ready, it was our delight to listen to Mr. Ames. His talk took a wide range over subjects grave and gay. He was equally at home on questions of literature, law and theology, and in his lighter moods, whether in sarcastic vein or of more genial humor, he was irresistible. He was then superintendent of the Sunday-school at St. Stephen's church, and as he started of a Sunday morning, in his heavy lion-skin overcoat, with his Bible under his arm, for his duties at the school, he reminded me of those churchmen of the middle age who, though not unmindful of the duties to which they were specially consecrated, were yet more at home when intrusted with the command of armies.

In 1846 I was associated with Mr. Ames as his junior partner, and had daily intercourse with him

for five or six years, at the end of which time he opened for a while a law office in Boston. In 1856 he was elected to the office of chief justice, which office he held for nine years, and did not long survive his resignation, which was caused by his failing health. During all this time I had ample opportunity to know him as he was. A more honorable man I have never known. A more learned lawyer I have neither known nor read about. A judge more anxious to do his whole duty never adorned any bench. No man had stronger or more tender affections. Burke said of his friend, Lord Keppel: 'Though it never showed itself in insult to any human being, Lord Keppel was somewhat high.' I have often thought of this expression in connection with Mr. Ames. With his peculiar temperament, it was difficult at times to be entirely just in the contest at the bar or when listening wearily on the bench to the endless tongues of lawyers. But no man had a kinder heart, or felt more keen regret when he knew he had hurt the feelings of another man. On one occasion when I told him that an old member of the bar was hurt by something he had said, the tears came into his own eyes as he said: 'Poor fellow; I am afraid he has reached the time when the grasshopper is a burden,' and immediately went to the man and made an ample apology. Once, when he had lost his temper at the bar, I said to him: 'I am sorry you treated —— in that way.' He replied: 'I am sorry, too; but you see I could not help it.'

I hesitate to repeat anecdotes about Mr. Ames;

there are still among the living so many men whose memory of him is as vivid as mine, and whose powers of analysis and description are much greater. James M. Clarke, William Binney, William and T. P. I. Goddard and Charles Hart will remember those sessions in the Whipple building (the *Journal* building we called it to distinguish it from the old Whipple building on the corner below), where we delighted to listen to Mr. Ames in the intervals of his professional labor. If I carry out my intention of writing about politics and politicians in Rhode Island, I shall try to give Mr. Ames his due place among the men who have shaped the policy of the State during the last forty years.

As I bring this notice of him to a close, I remember the last interview I had with him. For some time before he resigned the office of chief justice it was obvious to me, as it was to all his friends, that his health was failing and that it would be wise for him to rest from his judicial labors at least for a time. He was not fully conscious of his own infirmities, and he was very anxious to do his whole duty. Some of the toadies who always hover around a great man, told him that some of his friends thought he ought to suspend his labors, and thus produced a coolness between him and some of these friends, including myself. One morning when I entered the court-room he came down from the bench and taking me into the jury-room said: 'Payne I am going to resign this office.' I replied: 'I am very glad to hear it; if you will give yourself absolute rest for a year, I think you will be restored

to health.' He then requested my services in a little matter of business, the old friendly relations were restored, we shook hands, and I never saw him again.

During all the years which have passed since his death, there have not been many days when I have not recalled many pleasant memories of my long intimacy with Mr. Ames, and it gives me pleasure to think that if he knows anything of me now, he knows that from first to last I was an admirer of his ability and his character, and also was his faithful friend. I must allude to one incident which is fresh in my recollection. Most of my readers will remember the Hazard and Ives controversy. I have no desire to disturb the ashes which have gathered over it. In the course of it some charges were made against Mr. Ames, in his capacity as reporter of the decisions of the Supreme Court, which were under investigation before a committee of the General Assembly. He was advised to appear before the committee by counsel, and had a long and full consultation as to his line of defense. At the hearing before the committee, before his counsel could rise, Mr. Ames rose and said: 'Gentlemen, when my honor is called in question I cannot consent to entrust my defense to any other arm than my own.' I am sure that all who listened to him for the next fifteen minutes felt that his defense was perfect. It seemed to me at the time that every man in the room was dwarfed in the presence of the Great Chief Justice.

XIV.

SAMUEL CURREY—HIS PERSONAL APPEARANCE—THE T. R. I. —DEFENSE OF GORDON—CAPACITY AS A LAWYER—HIS RELIGIOUS BELIEFS.

Samuel Currey deserves a place in these papers. When I entered college in 1836 he was a rather mature student in the office of Attorney General Greene, and might be seen on Westminster street, towards the close of a pleasant afternoon, resting himself after his morning studies in pleasant intercourse with the young ladies, with whom that street was then a favorite promenade. At this time Mr. Currey was a bit of a dandy; he parted his hair in the middle, and wore a blue coat with brass buttons, with a buff vest and yellow kid gloves. He came out of college in 1835 without a degree, because he and his classmates were too conscientious to permit any distinction among their number in the assignment of parts at Commencement. He intended at one time to enter the ministry, and, in fact, was a licensed preacher and well grounded in the doctrines of his denomination. He was a Calvinistic Baptist. I have often conversed with him upon theological questions, and few men could deal with them with more acuteness and logical skill. To the day of his death I think he took no new departure in his theological creed.

Not long after he came to the bar, the movement in favor of an extension of suffrage was started in the

State, and Mr. Currey early took a prominent position on the side of Law and Order. He was a native of New Brunswick and a naturalized citizen of the United States. He took great pride in his fidelity to the institutions of his adopted country and State. In what was known as the Dorr war, in 1842, he joined a military company and attained the rank of sergeant; but while most of the young lawyers of the Law and Order party attained military rank which entitled them to ride about on horseback, I do not think that Sergeant Currey was ever mounted. He was for many years secretary of the T. R. I. A. O. E. A. O. F., a sort of debating society, which, during some portion of its existence, relieved the Providence *Journal* of some of the labor of controlling the politics of the State. It was understood at one time that without the sanction of this association no man could get ahead very far in Rhode Island politics. James F. Simmons was at one time its leading mind; but among its members were George Curtis, Thomas B. Fenner, Henry Anthony, 'Quaker' Henry we called him, to distinguish him from Henry B. Anthony, then the editor of the Providence *Journal*, and afterwards the Father of the United States Senate; Dr. S. Augustus Arnold, and a large number of prominent and influential citizens. I only mention some of those who were constant attendants about the time when I was honored with election to membership. In the meetings of this association, the current topics of the day, both State and national, were discussed. But perhaps the most important work of the society was in taking the nonsense out

of its members. After its discipline for a few years, a man who made a fool of himself by putting on airs of any kind was treated as incurable and dropped out of the ranks. It was a rule of the association that the president should give a supper during his year of office to the members. I will not attempt to describe these festive occasions. Those who remember them will require no reminder from me, and to those who do not remember them, no description would be of any avail. The last supper was given by President Seth Padelford, at the old Earl House, on North Main street. A severe rain-storm went on outside the building, the table was loaded with all the delicacies of the season, but the president was true to his well-known principles, and there was no drink but water; and as I remember, the society never met again.

In those far-off days, Hiram Fuller and Henry C. Whitaker were popular booksellers, and had a parlor in the old Franklin House, where the tables were well supplied with all the new books and magazines, and where there were plenty of cigars, and, on rare occasions, in very cold weather, whiskey punch. In these parlors Mr. Currey was a welcome guest. The conversations on these occasions would answer very well for chapters in *Noctes Ambrosianæ*. Of those who enjoyed them, Whitaker, Clarke, Hart and Hazard survive. But Fuller, George and Henry Rivers and Currey, to use a favorite phrase in more common use once than now, 'have passed on.' 'Entered into rest,' is now the phrase which we apply to one at whose door the black camel has knelt. In those days

there were 'hops' in the Franklin House, and Rhode Island's capital had gathered there her beauty and her chivalry. In the great revival of 1857, in one of the business men's prayer meetings in the hall of the Franklin House, where Mr. Currey, in common with others of his fellow citizens confessed his faults, he was obliged to remember with extreme regret that once, in that very room, he had indulged in the frivolities of the dance. The Rev. J. Benson Hamilton could not be more severe than Mr. Currey in denouncing that dangerous amusement.

Mr. Currey acquired much distinction by his able defense of Nicholas Gordon, indicted as accessory to the murder of Amasa Sprague. He afterwards for many years occupied a high position at the bar as counsellor and advocate. He was engaged in much of the important litigation in the State during his active professional life. He rendered valuable and important service as counsel of the Hartford, Providence and Fishkill Railroad Company. He was one of the counsel engaged in the contest over the will of the late Colonel Thomas Halsey. I was near enough to that case to know something about it. When Mr. Ames went upon the bench of the Supreme Court, I took his place and argued some of the questions from a brief prepared by him. Rufus Choate was associated with me, and I had several consultations with him, but he did not appear in the argument of the case. It was at one time supposed that Thomas A. Jenckes would act with Mr. Ames, but he finally decided to represent the principal devisees under the will as against the heirs at law. George Wood, of

New York, represented some of the heirs at law, and Samuel Currey others. At the first hearing, Benjamin R. Curtis was on the bench, and the questions in the case were argued by Mr. Jenckes, Mr. Wood and myself. I expected to have the assistance of Mr. Choate, but he did not appear. I made an earnest appeal to the court for delay, but without success. At the second hearing of the court, Judge Clifford was on the bench, and Mr. Curtis appeared as counsel. Mr. Curtis was not much given to compliment, and I well remember what he said about the argument of his associate, Mr. Currey: 'It would be impertinent in me to attempt to improve or add anything to the lawyer-like argument of my associate upon these questions, some of the most difficult in the law of real estate. More than this it would be indelicate for me to say in the presence of the author of this clear and exhaustive discussion.'

Mr. Currey was not a popular orator, but he was an earnest, clear and powerful speaker. I often said of him during his life that he was the most 'sure-footed' member of the bar. Give him an opportunity for full examination of a question of law upon principle and authority, and he rarely, if ever, made a mistake. I doubt if his deliberate judgment was ever overruled by the tribunal of last resort. If it was, I should be inclined to say, so much the worse for the tribunal. In the examination of such questions, I think he derived much benefit from his early theological training. His mind worked with the logical force and precision of an old Puritan divine of the seventeenth century. Mr. Currey was a careful

student of English constitutional history, and while he adhered to the opinions in Church and State inherited by him and his Baptist brethren from Roger Williams, he was no believer in the doctrines commonly called democratic. He was of the Hamilton rather than of the Jeffersonian school of politics. As a man, Mr. Currey was amiable and generous to a fault. Like all the rest of us, he had some weaknesses, among them a morbid sensitiveness. He liked to say pleasant things, and he liked to have pleasant things said to him, and anything like ridicule or neglect stung him to the quick. But he was the most placable of men. I have known him to leave the rooms of the T. R. I. smarting under a sarcasm of George Rivers, and vowing that he would never return, and, half an hour afterwards, return arm-in-arm with Rivers, reconciled and as pleasant as ever. The late President Garfield said that one of his great weaknesses was that he could not hold his anger. It is a common experience of good-natured men. Taking men as they go, nothing helps a man so much as to so conduct himself in a quarrel that the opposer may beware of him. Not long before his death, I asked Truman Beckwith what made him insist on a very trifling matter. 'I made up my mind,' said he, 'early in life to perform all my contracts with other people, and to compel other people to perform their contracts with me, and it has saved me a great deal of trouble during a long life.'

At length there came to Mr. Currey failing health, as the years drew nigh in which he could say, 'I have no pleasure in them.' He was rather a lonely

old man; but kind friends were about him to the last, notably Henry C. Whitaker and William W. Hoppin. After his death, religious services were held in the vestry of the First Baptist church, and his pastor, the Rev. E. G. Taylor, D. D., spoke of his many good qualities, and especially of the confident faith which sustained him in the mortal hour. His friend, Governor Hoppin, spoke in warm terms of eulogy, and commended his virtues to the imitation of his professional brethren who were present. His remains were taken to New Brunswick, and he sleeps among his kindred.

XV.

SAMUEL Y. ATWELL — SUNDAY OBSERVANCE — AN IMPRESSIVE EXPLANATION — MR. ATWELL AS A MAN AND A LAWYER.

When I asked my friend Slocum if he had ever seen Mr. Atwell, he said: 'Only once. When I was a little boy, I saw an *old* man crossing the street, and my father said to me: "That is Lawyer Atwell."'

Samuel Y. Atwell was born June 24, 1796; he died October 25, 1844, being little more than forty-eight years old. In this way do young people take the measure of our days. I have heard with surprise and regret that an allusion to Mr. Atwell in one of these papers seemed to accuse him of a lack of hospitality. Nothing was farther from my thought. I supposed that it would be as obvious to others as it was to me, that for a couple of young men to call uninvited upon the tired lawyer and disturb his day of rest, and expect to have his household arrangements changed by the preparation of a feast for them, was a piece of impertinence properly punished by a day of fasting. Though I have not been informed that there was any Jewish or superstitious observance of the day in the village of Chepachet, I think it quite probable that Mr. Atwell had some old-fashioned notions about Sunday. Theophilus Parsons was a Massachusetts Unitarian, but he refused to be consulted professionally on Sunday. He would have been a bold man who should venture to speak to Henry Strong, the Con-

necticut Calvinist, upon secular business on that day.

I remember an incident which may illustrate Mr. Atwell's feeling about Sunday, and other traits of his character. There was a case on trial in the Supreme Court in which Mr. Atwell was counsel on one side, and Aaron White and Richard Ward Greene on the other. I have already spoken of Mr. Greene, and possibly may find a place for Mr. White. In the course of the trial, Mr. White said, in a sneering undertone: 'That paper was got up in Mr. Atwell's office, *and on a Sunday, too.*' Mr. Atwell's vast frame shook with wrath as he said: 'Repeat that remark and I'll pull your nose.' Mr. Greene lifted up his hands with an expression of surprise at this conduct. Mr. Atwell said: 'You defend your colleague, and I'll pull your nose.' Then there was silence, and the trial of the case went on.

At the opening of the court next morning, Chief Justice Durfee said: 'I feel compelled to allude to what happened before the adjournment last evening. Such occurrences at the bar must be avoided. They are unseemly, and may possibly reach the bench and disturb the judgment of the court.' He paused, evidently waiting for some explanation or apology. Mr. White and Mr. Greene were silent, looking down like two school-boys who had heard the reproof of the master, and were afraid that some severer punishment might follow. But Mr. Atwell rose to the full height of his majestic presence and said, with a voice tremulous with emotion and charged with profound respect for the tribunal and the man: 'I do not con-

sider that the first fault was with me; but if I have said or done anything which has caused your honor to grieve, either as a man or as a magistrate, I am sincerely sorry.'

I hesitate to write about Mr. Atwell, knowing as I do that there are living, men so much better qualified than I am to recall him to a new generation. I was never intimate with him. I do not remember that I was ever associated with or opposed to him as counsel in any case. He died a little more than two years after I came to the bar. While a student I sometimes saw him in consultation with General Carpenter at his office. I have listened to him as he conversed with his friends, when now and then he stayed for a night in the old Franklin House. I frequently heard him at the bar and in the General Assembly. I shall attempt to describe the man as he appeared to me. I suppose we all carry about with us something which is described as personal presence, which makes an impression upon others, of which we are often unconscious; in some it is very weak, in some it is very strong; in some cases it attracts, in other cases it repels; in some cases it is easily effaced, in others it is permanent. No man ever forgot, I suppose, the first time when he saw Daniel Webster. Probably no student in Brown University ever lost the impression of his first interview with Dr. Wayland. Whoever met Mr. Atwell on the street or in the court-house turned to look again, and saw more than marks the crowd of common men. Whoever heard him speak, felt that he was in the presence of what is called a high-toned man. He

always lifted his hearers to the highest level of the subject which he had in hand. As a lawyer I must speak of him from the testimony of others.

John Whipple, with whom he studied law, said he would take the contents of a law book and transfer them to his own brain for permanent record and use more rapidly than any man he knew. He also said that Mr. Atwell was the ablest antagonist he ever met at the bar, and Mr. Whipple had contended with the man who secured the acquittal of Avery, and with the man who procured the conviction of Knapp. Mr. Whipple was an older man than Mr. Atwell; in fact, Mr. Atwell studied law in the office of Mr. Whipple. But, as I remember, when they were associated in a case, Mr. Whipple was accustomed to give the position of leading counsel to Mr. Atwell. I have heard Mr. Atwell say that he did most of the thinking about his cases on the road between his residence in Chepachet and this city. And his arguments in court had the freshness and beauty of the region in which they were prepared. As an orator, Mr. Atwell had few rivals and no superior. In those days, when murder was a capital offense, he frequently defended a criminal, and then a crowded court-house listened to his appeals. I remember a case of one Anthony Benjamin, a low character, who killed somebody in a tavern brawl. In his defense, Mr. Atwell contended that he did the act while protecting his domicile from assault, and he lifted the audience and the jury into a region where Anthony Benjamin seemed a hero of romance. And when he said: 'A poor man's house is his castle; the winds of heaven may whistle through it,

but the King of England cannot enter it,' one might easily suppose that he heard the words as they came from the lips of the Earl of Chatham and echoed among the arches of the House of Lords. Not long before his death, when defending a criminal, he was called upon to speak of a witness who had been criticised as having testified to the improbable story that at a certain hour he was in a Roman Catholic church in this city. 'And where should he have been but in the house of worship consecrated to his ancestral faith? Where should I have been at that hour unless in a Protestant Episcopal church, in whose doctrines I fully believe, whose precepts I have but imperfectly obeyed, and in whose bosom, trusting in the Divine mercy, I expect soon to die.' There is nothing very remarkable in these words, but as they were uttered, there were few dry eyes in the court-house. And those who remember the voice of Mr. Atwell will not be surprised at the result. Not the voice of Jenny Lind was sweeter in tone; not the voice of Daniel Webster was grander in volume.

I have heard that an old politician, speaking of Mr. Atwell's supposed ambition for a seat in Congress, and of his then recent election to the General Assembly, said: 'Let him come here; he can't get any further.' This man had the philosophic glance of the merry girl who pronounced the Childe's destiny in the little poem of Mrs. Hemans. It required but slight observation of Mr. Atwell to see that he was not likely to succeed in political life. The North American Indian, when he wishes to know what is coming, puts his ear to the ground and listens. This

is the proper attitude of the politician who means to hear and obey the voice of the people. Mr. Atwell took counsel only of his own convictions. I heard him in the General Assembly, addressing the Law and Order majority upon the question of the extension of suffrage, say: 'You may as well attempt to bridle the whirlwind. I warn you to consent to this measure if you would avoid that Dead Sea of political annihilation upon whose surface no swallow dips her wing, and beneath whose waters no living thing abides.' But about that time Nathan F. Dixon died, and old Governor William Sprague took his seat in the Senate and transferred his allegiance from the Dorr to the Law and Order party, and the whirlwind went down, the 'political annihilation' came upon Mr. Atwell and his friends, and the same class of men who controlled the State have continued to guide its policy from that hour to this. As a man, Mr. Atwell was full of dignity, grace and sweetness. His power was great and was generously used. He loved music, children and the morning air.

Of all the great men of whom history has kept a record, I think Mr. Atwell most resembled Charles James Fox. Like Fox, he had a large physical frame; he shared with him his love of literature. Like Fox, he was powerful in debate, and like him he failed to get a permanent hold on the administration of government and to leave a permanent mark upon the legislation of his country. Like Fox, also, he gained a place in the affections of his fellow-men which his more successful competitors in the race for worldly honors failed to secure.

XVI.

Sylvester G. Shearman — Witty Remarks and Replies — Some of His Legal Cases.

A kind message about these papers came to me from an old friend, who also said: 'Don't forget Judge Shearman.' He was a man whom it would be very difficult to forget. It would be still more difficult to give a correct account of him to one who never saw him. This may seem strange, for, as I think, the most characteristic thing about him was his mental sanity.

When, many years since, a case was on trial, a well-known citizen, Mr. Anson Potter, was called as a witness and testified in very positive terms that my client was insane. My associate said to me, in a whisper: 'We may as well give up this case.' 'Wait a minute,' I said, 'until I have a chance to cross-examine.' When my turn came I said: 'Mr. Potter, don't you think that most of us are insane?' 'Yes,' he replied, 'none of us are quite right.' I said: 'Do you think this woman is more insane than ordinary people?' 'No,' said he; 'I should think not.' Most people are astride of some hobby, but Sylvester G. Shearman stood on his own feet, and put a just estimate upon men and things. Without any pretense to superior sanctity, vast acquirements or greatness of any kind, he was a good man, knew what was worth knowing, and discharged faithfully the duties of all the positions in which it had pleased God or the people to

place him, whether as a lawyer residing in the village of Wickford, or a member of the General Assembly representing the town of North Kingstown, or a justice of the Supreme Court, holding for many years, by assignment, the Courts of Common Pleas throughout the State. He was welcome into whatever company he came, for he was sure to bring wise, tolerant and cheerful talk; and when he went away he left friends behind him; for, though he had as large a charter as the wind withal to blow on whom he pleased, there was no malice in his nature and no sting in his wit. On whatever subject he spoke he 'hit the nail on the head,' driving it home with some apt illustration or anecdote. In this he somewhat resembled Abraham Lincoln. As in the case of Abraham Lincoln, some of the stories of Judge Shearman could hardly be repeated in print without offense to the present taste, although the words which he used were not without precedent in our English version of the Bible, at least before the recent revision. But the stories of Judge Shearman, like those of Mr. Lincoln, came from a clean imagination, and those who found anything indecent in them belonged to a class accurately described by Dean Swift as 'nice men of nasty ideas.'

When the late James T. Brady came to Washington county to defend some bank robbers, he was much impressed by the ability of Mr. Shearman, and said to him: 'Why do you stay in such a little place as Wickford; why don't you remove to New York, where there is a wider field for your talents?' Mr. Shearman replied, naming certain disreputable classes,

in Saxon tongue: 'Take these people out of New York and it is not much bigger than Wickford after all.' When a lawyer descanted upon the great constitutional right of every citizen to have speedy justice, Judge Shearman said: 'Yes, yes; the law, like the City Hotel, is open to all who can pay for it.' When a man in a somewhat self-righteous tone was praising himself for his habit of early rising, Judge Shearman said: 'Well, well, in the south county nobody gets up early in the morning except to steal or drink rum.' He once acted for a mercantile agency, and being asked if it was not sometimes difficult to give a correct report of the standing of traders, he said: 'Not in the least; a man who dresses himself up, puts on a silk hat, and rides about in a buggy on Sunday, smoking a cigar, is sure to fail. A young married man who gets a pretty baby carriage for his wife, instead of letting her carry her baby about in her arms, will never carry on a country store to any advantage.' When a lawyer of rather indolent habits was ridiculing the activity of one of his younger brethren, Judge Shearman said: 'Well, well, an engine of one cat-power, running all the time, will do more work than an engine of forty horse-power standing still.' He was discoursing to me at one time about the folly of travelling about the world. I said: 'How can you estimate the advantages of travel? You have not been a traveller yourself.' He said: 'Oh, yes, I have; I have been over to Brand's Iron Works half-a-dozen times when I might have stayed just as well in Wickford.' His description of modern progress, as being like a goose destroying everything

before it, and befouling everything behind it, if repeated in his exact words, would be more graphic than in the language which I have used. But possibly this sufficiently expresses the idea. When he wanted forcibly to express the longevity of a family, he said: 'I never knew a —— who did not outlive the Almighty's statute of limitations, his friends, his fortune and his reputation.' When, in response to some remark of his on the bench there was a laugh in the court-room, a lawyer said: 'A man was fined in Woonsocket the other day for laughing.' 'Well, well,' said the judge, 'if the people in Woonsocket would laugh more and lie less, it would be better for them.' If there is any one to whom these anecdotes do not reveal a bright mind and a genial nature, he may accuse his own dimness of mental vision.

When the peasant Burns appeared in Edinburgh society, high-born ladies and gentlemen were astonished at his self-possession. Judge Shearman was not at all such a man as Burns, but they were alike in this: without the least affectation they both felt

> 'The rank is but the guinea's stamp,
> The man's the gowd for a' that.'

For what is called the democratic theory of government, I think Sylvester G. Shearman had a profound contempt. He was in politics a natural conservative; but in judging men he looked through all external conditions to the man himself.

As a lawyer, while he had competent learning, his main strength lay in his moral nature. He felt what was right, and a man who examines legal questions

from this standpoint will, in nine cases out of ten, form a correct judgment. As a judge he was clear-headed and impartial, and in the trial of cases made things very pleasant, and was a great favorite with the bar. He was often employed as a referee, and parties were almost uniformly satisfied with his decision. In one case, Mr. Blake had made a claim against a well-known citizen for a fee of five hundred dollars. The claim was disputed, and the matter was referred to Judge Shearman. A well-known lawyer, whom I do not name because he is living, appeared for the defendant. The case was tried in Mr. Blake's office, and I was present as a witness. Mr. Blake said that there were some facts which he wished to state which he could not very well separate from his argument, and before commencing he would like to be sworn. The lawyer on the other side asked the same privilege, and it was granted by the referee. So far as I remember, this was the only case which I ever heard argued by counsel under oath. The referee allowed Mr. Blake two hundred and fifty dollars. I met him afterwards and asked him how he got at that sum. I suppose he thought it was an impertinent question, and he made this reply: 'Well, well, I thought Mr. Blake was entitled to one hundred dollars; you were entitled to the same sum, and as you had given it up, I thought Mr. Blake might as well have it; that made two hundred dollars; and as to the fifty dollars, I gave it to him on the same principle that the old woman made apple sauce. She put in all the sugar her conscience would allow, and then shut her eyes and put in another handful.'

Judge Shearman once had before him a case in which a man who was accustomed to make music for small parties claimed that a fiddle was a tool of his trade, and so exempt from attachment. When he came to charge the jury, the judge made quite as much entertainment as was ever made by any fiddle. The case went to the Supreme Court, and on the day when it was tried there Mr. Jenckes gave a supper to Judge Clifford and the judges of the Supreme Court and several members of the bar. When Chief Justice Ames came into the room he said: 'Shearman, you've made trouble by sending a fiddle up to my court. I have made short work with that fiddle.' 'Mr. Chief Justice,' said Judge Clifford, in his solemn way, 'beware of a rash ruling in a small case; it may touch a great principle.' 'Oh!' said Mr. Ames, 'I have saved the question for the full bench. I am determined that that fiddle shall go as high as a fiddle can get in Rhode Island.'

And so have I obeyed the injunction of my friend, not to forget Judge Shearman.

XVII.

Samuel Ashley — Cases in which He was Concerned — The Williams-Himes Libel Suit.

I now turn to one whose path through life was not in the regions of 'fat contentions and flowing fees.' The present generation knows nothing of Samuel Ashley, and the number of those who knew him and still survive is small indeed. But those who knew him well, remember him with kindness and respect. I formed his acquaintance soon after my admission to the bar, and it was my pleasure to cultivate his friendship to the end of his life. He gained none of the prizes for which men contend — neither wealth, nor power, nor fame. I doubt if he ever desired them much; and certainly during the greater portion of his life he expected them not at all. He had a long struggle with ill health and a profession which furnished no play for his best powers, but he fought a good fight, and I think he enjoyed his rest when at last 'the weary wheels of life stood still.' When I go over to the majority, some much more distinguished men whom I have known, must wait until I have had a talk with Mr. Ashley. I shall be glad to tell him of the prosperity of his children; of the respect in which they are held; and especially of the professional reputation and attainments of his son, Lucius C. Ashley, now an eminent lawyer in the city of New York.

Mr. Ashley had many clients, but their cases, as a rule, would hardly justify large fees. Sometimes a

client would say to him: 'I wonder what Charles F. Tillinghast would say about this question?' Mr. Tillinghast was a much-honored and trusted counsellor, much consulted by the leading business men of this city. This was not pleasant. Mr. Ashley would sometimes express his annoyance at this question, but many lawyers have had a similar experience. I remember on one occasion, when I was junior partner with Mr. Ames, that our client passed me by and employed another young man to assist Mr. Ames in the trial of a case. As this client was a good-natured man, I ventured to ask him the reason of this. He said: 'I have no doubt you would do very well; but I want one who will pick the witnesses,' meaning by that a man who would cross-examine with much severity and great length. In the kindness of his heart, and to save his client expense, instead of putting a summons into the hands of an officer, Mr. Ashley would go about and see the witnesses and get them to promise to attend court, and when the case was called the witnesses would not be there. Many a time have I seen his cases continued for this cause. Judge Staples would say: 'Mr. Ashley, are your witnesses under summons?' 'No, your honor; but they promised to be here.' 'I can't help that; let the case be continued;' and then the client would find fault with Mr. Ashley and dispute his bill. Mr. Ashley had little taste for the technicalities of his profession; but with that kind of law 'whose seat is the bosom of God, and whose voice is the harmony of the world,' he was quite familiar. In the higher regions of thought he was at home. He was an

ardent admirer of the great Hungarian, Kossuth, and spent time in the study of his speeches which might, in one sense, have been more profitably employed in the preparation of his cases for the Court of Magistrates and the Court of Common Pleas. He was also a careful student of the writings of Swedenborg. He was a man who could do much more for others than for himself. For one of the last acts of his life I owe him a debt of gratitude. With great difficulty he climbed two flights of stairs to my office, and told me that his son Lucius had a friend who wanted a situation as a student at law, and he added: 'I know the young man and I know you, and I think you and he will get on well together.' He was not wrong. Whether as student, as partner, as associate counsel, as opponent or as friend, Francis Colwell has left nothing to be desired.

I think I must give some account of one or two cases in which Mr. Ashley was concerned. An old woman of some education, of some skill as a physician, had got into trouble with her husband and wanted separate maintenance. She selected Mr. Ashley as her counsel, and he kindly employed me as his associate. The burden of frequent consultations was laid upon Mr. Ashley, and if she made life as uncomfortable for her husband as she did for her counsel, I think there was some excuse for his neglect to provide for her. The patience with which Mr. Ashley endured her oft-repeated story of her domestic distress was beyond all praise, and he finally succeeded in getting for her a provision for the support which she desired. Afterwards she employed Mr. Colwell

to draw her will; the property was small, but the instrument was long and complicated and had to be re-written many times. When it was finally completed and executed, she came to Mr. Colwell one day and said she had forgotten one important thing. She wished to add a codicil to her will and make a final disposition of her false teeth, which she wished to wear as long as she lived.

On one occasion the Second Advent church in this part of the country was divided against itself. Elder J. B. Himes became a sort of Leo X. in the body, and he found his Martin Luther in one Mr. Williams, of this city. Elder Himes erected a tent here, and was eloquent in his predictions of the second coming. Mr. Williams went through the audience circulating a little book which accused Brother Himes of misconduct in dealing with the funds of the church. Elder Himes told the audience that this book was a libel. Mr. Williams sued the elder for slander in that he had charged him with circulating a libel. Mr. Williams represented one party in the church, and Elder Himes led another. The case came on for trial in the Supreme Court. Richard Ward Greene, chief justice, presided at the trial. The question to be tried was whether the charges against Elder Himes which Williams had circulated were true or false. Williams had selected Mr. Ashley as attorney, and with him was Benjamin Cozzens, who had recently returned to the bar, which he ought never to have left. He was made for a great lawyer. The senior counsel for the plaintiff was General Thomas F. Carpenter, then at the height of his fame. Mr. Ashley had also the valua-

ble assistance of his son, Lucius C. Ashley. I was attorney for the defendant, and had for associates Samuel Ames and Rufus Choate.

The parties to the case were mere figure-heads; the real contestants were the two factions in the church. The labor of preparation was long and arduous; and I think Mr. Ashley never suffered more than he did in the consultations with the angry divines and deacons of his side of the case. I was young and strong then, but to this day, when I look back upon the long evenings spent in listening to the grievances of my reverend clients, I suffer over again the fatigues of those distant nights. I remember well one evening, when my office was full of these divines and I was looking about for some relief, when I heard the bell of the Central Congregational church toll for the Wednesday evening prayer meeting, I said: 'Gentlemen, you must excuse me this evening, I cannot omit the prayer meeting at my church;' and in this way I obtained an hour or two of quiet.

The trial lasted a week or more, but I can see Brother Ashley now, in the court-room, as day after day he sat weariedly listening to the suggestions of his angry and excited clients. When the evidence was all in, and Mr. Ames rose to make his closing argument for the defense, General Carpenter rose for the plaintiff, and in his most impressive manner said: 'I wish to make a statement. We brought this case for the purpose of establishing the truth of the charges contained in this book; having done this, we have no desire to recover any damages against the defendant; we will, therefore, discontinue the case.'

The clerk made the entry, the Second Advent church left the court-room, and I handed Mr. Ames the five hundred dollars which my clients had agreed to pay him for his argument. He put the roll of bills in his vest pocket, saying: 'I think I am pretty well paid. I hope Mr. Ashley was as well paid.'

Edmund Burke says in substance that no man was ever much concerned in affairs of importance who had not often met men unknown to fame whose ability and character were equal to any of those who had made a conspicuous figure in the public eye. I have often thought of this remark in connection with my friend, Mr. Ashley. During a professional life of more than forty years, I have known many lawyers who have risen to considerable eminence who had not a tithe of the intellectual ability of Mr. Ashley, and who, in moral character, fell far below his standard. Success is the only test of merit which the mass of the community can apply to any individual, but it is a very rough and imperfect test. And yet something is to be said on the other side. I have never noticed any case of remarkable success among my brethren of the bar which I could not account for by some genuine mental or moral quality in the man. And where the man has failed in the ordinary sense of the word, it is sometimes easy to see that, with all his great and good points, some defect in him had 'quarrelled with the noblest grace he owed and put it to the foil.' Tried by the severest tests, Mr. Ashley's life was a grand success. His hands were clean, his purposes were pure, his courage never failed; he had the respect of all who knew him, and, above all, he had his own self-respect.

XVIII.

Charles T. James — The Atlantic Delaine Company Case in the Courts.

At the January session of the General Assembly, 1850, Charles T. James was elected as one of the Senators from this State in the Senate of the United States for the term of six years, commencing on the fourth of March, 1851. This was a memorable transaction in some of its aspects, and will form an interesting chapter in the history of the State and of some of the politicians who brought it about. Among its results was a business enterprise of considerable magnitude, and a litigation of so remarkable a character that I think I will suspend these biographical notices while I tell the story which will lay the foundation for some account of several lawyers of great, and even national, reputation.

At this time Charles T. James was reputed to be a very rich man, and had a deservedly high standing for skill in the erection and equipment of large manufacturing establishments. Several well known business firms entered into a contract with General James to build a mill at Olneyville, in this State, which was afterwards erected and known as the Atlantic Delaine Mill. An act of incorporation was procured under the name of the Atlantic Delaine Company, in which General James was to be a large stockholder, and some of the other stockholders were

to be the selling agents of the company for the product of the mill. Before the mill went into operation, General James required a loan of seventy-five thousand dollars, which was made to him by some of the stockholders upon a mortgage of some of his property, including his stock in the mill. Afterwards General James made an assignment. In the winter of 1853 his property was advertised for sale under the mortgage. His assignee resisted the sale upon the ground that he had not sufficient knowledge of the condition of the company, and obtained an injunction until he should be furnished with proper accounts. Pending this injunction, the treasurer of the company furnished to the assignee of General James an account, being a brief abstract of the condition of the company. Thereupon negotiations were opened between the assignee of General James and the Atlantic Delaine Company and the stockholders who held the mortgage. The assignee proposed to give a release of the interest of his assignor in the stock of the company upon a full discharge by the company and the stockholders of all claims against General James or his estate.

The negotiations continued for several days, and a settlement was finally made upon the basis proposed by the assignee, and mutual instruments of release were executed, Samuel Ames acting as counsel for the company and its stockholders, and William H. Potter acting as counsel for the assignee. This was in March, 1853. In March, 1859, one day before the expiration of six years from the date of the settlement, General James filed a bill in equity in the Circuit Court of the United States, in the district of Rhode

Island, against the Atlantic Delaine Company and its treasurer, seeking to set aside this settlement upon the ground that it had been procured by the presentation of false accounts to his assignee, and praying for an account of his interest in the company and for other relief. In this case James H. Parsons, Thomas A. Jenckes and Caleb Cushing were solicitors for the complainants, and Richard Ward Greene and Abraham Payne were solicitors for the respondents. We demurred to the bill upon the ground that the allegations about the presentation of false accounts were not sufficiently specific.

Very early in the argument upon the hearing of this demurrer, Judge Clifford remarked with much solemnity: 'I think Mr. Jenckes has got too much into this case for a demurrer,' and after the hearing he very promptly overruled our demurrer. This I understood at the time meant that he was confident that the complainant had a good case, and that Mr. Jenckes would be able to make it appear. I do not mean that Judge Clifford was conscious of any prejudice in the case, for, as has been well said: 'Prejudice of which a judge is conscious, and which influences his conduct, ceases to be prejudice and becomes corruption.' What I do mean is this, that General James thought he had been hardly treated by the company, and frequently talked over his grievances with his political and social friends, Caleb Cushing and Nathan Clifford, and when Judge Clifford found the case on the docket of his court he was very confident that the evidence to be produced would require him to render a decree in favor of the complainant.

I think he was also influenced by the very high reputation of Mr. Jenckes, and felt quite sure that he would not advise such a suit without full examination and a thorough conviction that his client ought to prevail. And this confident attitude toward the case, all the counsel of General James maintained to the end. We filed an answer, denying all the equities of the bill, and proofs were taken. Before the case came on for argument, I was requested by the treasurer of the company to present the case to Benjamin R. Curtis and take his opinion. After hearing my statement I well remember the manner and tone of Mr. Curtis as he said: 'Mr. Payne, it is impossible that you should lose this case.' I did not share this confidence. I knew very well that no false accounts had been presented, and that there was no evidence in the record even tending to sustain such an allegation. But I also knew the ability of Mr. Jenckes as an accountant. I was also pretty certain that the judge knew nothing about accounts, and I remembered the remark of a skillful accountant in whose hands I once placed a set of books, requesting him to examine them and tell me the result. 'That is no way to examine books,' said he; 'tell me what you want to prove and I will bring it out.' At the argument, Mr. Jenckes made a very skillful statement, which possibly he understood, but I am quite sure that nobody else did; and in his closing argument, General Cushing, without saying anything about the evidence in the case, made a tremendous appeal to the court to set aside a settlement which, as he said, had been obtained by imposition practised upon his

assignee while General James was engaged in his public duties, and unable to leave Washington just at the close of a session of Congress, and he prayed most earnestly for a decree for an account, and his prayer was very promptly granted, and the case was sent to Charles Hart as master in chancery to take the account.

It was quite noticeable that while in his opinion the judge stated that false accounts had been presented, he did not specify any errors which he himself had found in the accounts. After a long and careful investigation the master made his report, and in the account, as he stated it, it appeared that the accounts which had been presented by the treasurer of the company to the assignee before the settlement, were correct and accurate in every particular. This annoyed the judge very much. He remarked to one of the counsel for the complainant: 'This master seems inclined to overrule my opinion.' Afterwards Judge Curtis, who had then been retained in the case, came to me and said: 'I think Judge Clifford has seen his mistake, and wants a good excuse to reverse his judgment. He has suggested to me that we should make a motion to reopen the case for further testimony, and I think we had better do it.' I did not agree with him. I had no belief that any evidence would induce the judge to reverse a judgment which had been rendered without any evidence in support of it. But the case was reopened practically upon the motion of the judge himself, and further evidence was submitted, but upon the coming in of the new evidence, another opinion was delivered affirming the former

decree and asserting that there were grave errors in the accounts, but still failed to point out any specific errors. The result was a decree in favor of the complainants.

Meantime the crash of 1873 came on, and the A. & W. Sprague Manufacturing Company, the firm of Hoyt, Spragues & Company, and the Atlantic Delaine Company — all of whom were closely connected by notes, drafts, acceptances and endorsements — went down together. Thomas A. Jenckes having expressed the opinion that these three concerns ought to be wound up in bankruptcy, sagacious men shook their heads and said to each other that Mr. Jenckes was losing his mind. When I gave the same opinion privately to Mr. Hoyt, he withdrew his confidence from me and took other advice. When Mr. Amos D. Smith, acting for the National Bank of Commerce, caused a petition in bankruptcy to be filed against the A. & W. Sprague Manufacturing Company, such was the indignation of their creditors and the community that for a time mob violence was apprehended; and the petition was finally withdrawn. Since then the creditors have had an opportunity to reflect upon the matter.

Mr. Hoyt labored under the strange delusion that the settlement of the case of James *vs.* Atlantic Delaine Company would restore the prosperity of his firm; and he made very liberal offers of compromise, which were rejected, and an appeal was taken to the Supreme Court of the United States. In my last interview with Judge Curtis, he expressed his satisfaction at this result, and said: 'I shall be personally

very much disappointed if I do not have an opportunity to take part in procuring a reversal of that decree in the Supreme Court.' He died before the case came on there, and Mr. William M. Evarts, of New York, was retained in his place. I commenced my opening argument in the Supreme Court in these words: 'May it please your honors: this is a big record and a big brief, but it is a very simple case. The only material question is, whether an account of half a dozen items contains any errors. If you lay aside these books and listen to me, I will undertake to satisfy you that there is no evidence tending to show any error in this account, and that there is positive evidence demonstrating that it is absolutely correct.' From that moment I had the undivided attention of the court, and I felt that at last I was master of the situation. In conclusion I said: 'Whoever takes the seat of judgment and undertakes to point out from the evidence in this record any error in this account, will find that he has undertaken a task which the human intellect is incompetent to perform.' Mr. Clement H. Hill, of Boston, made the argument for the complainant, and with great ability and fairness said all that could be said on that side of the case. Circumstances compelled me to leave the court before Mr. Evarts made his argument. Within a few weeks I had the satisfaction of hearing that the decree of the Circuit Court had been reversed by the unanimous decision of the court with the single exception of Judge Clifford, and he did not deliver any dissenting opinion. This satisfaction was tempered with regret for the disappointment of Mrs. James and her

daughter, two estimable ladies, who, I doubt not, were confident, as they had some reason to be, from a long series of successes in the court below, that they had a good case.

XIX.

James H. Parsons — His Early Clients — Great Ability and Diligence — His Filial Admiration and Social Qualities.

Many years since, during a temporary absence of the professor, I had the pleasure of giving instruction in history to the senior class of Brown University. With this class I had most agreeable relations, and at the close of my labors they presented me with an elegant edition of the 'Waverly Novels.' Thomas A. Jenckes used occasionally to remind me with a very significant smile that my pupils had shown their estimate of the accuracy of my historical knowlege, by presenting me with the most celebrated work of fiction.

James H. Parsons was a member of this class, and for many years I knew him very well, and I cannot leave him out of these papers, although I feel how inadequate would be any attempt of mine to present him to my readers in his habit as he lived. And among these readers are many of his companions, who remember with delight the hours passed in his company. His father was a lawyer of eminence, and at one time held a high judicial position in Pennsylvania. After his graduation, James H. Parsons studied law in Philadelphia, and I think was admitted to the bar there. When he took up his residence in Providence, he spent some time in the office of Thomas A Jenckes. Mr. Jenckes was then at the

height of his professional reputation, and his office was full of young men, some of whom have since risen to eminence at the bar and in political life, and all of whom love to talk of the wonderful ability of their old instructor, and of the many acts of kindness they received at his hands. Napoleon is said to have taken the exact measure of each one of his marshals, and Mr. Jenckes knew exactly what kind of service each young man in his office was fit for, and he selected Mr. Parsons for his associate in several of his important causes. On the other hand, no one more justly appreciated the merits of Mr. Jenckes than James H. Parsons. These men were in full sympathy in a common love of fun, of literature and of law. Mr. Jenckes, like many other distinguished men, had a large following of toadies, but the devotion of Mr. Parsons to his chief was disinterested and sincere. It was like that of the chivalrous and high-souled Windham to Edmund Burke. When the bar assembled to pay a tribute of respect to the memory of Mr. Jenckes, many words were fitly spoken, but none came more directly from the heart than those which fell from the lips of Parsons.

I do not mean to underrate the merit or ability of Mr. Parsons when I say that he owed much of his early success at the bar to Mr. Jenckes and to his father-in-law, George M. Richmond. Through them he secured such clients as Benjamin Buffum, Earl P. Mason, the National Rubber Company and the Richmond Manufacturing Company, and was enabled to take an active part in such important causes as James *vs.* the Atlantic Delaine Company, Goodyear *vs.* the

National Rubber Company, and the Richmond Manufacturing Company *vs.* the Atlantic Delaine Company, the controversy over the construction of the will of James DeWolf, and last, but not least, the case of Lawrence *vs.* Staigg. In these cases were involved many of the most important questions in equity pleading and jurisprudence. While Mr. Parsons was not the leading counsel in any of these cases, he did quite as much work in all of them as any of his older associates, and he did his work well. Under the instruction of his own father, he was well grounded in the principles and practice in equity as understood in the State of Pennsylvania; and what a Philadelphia lawyer does not know about the subtle questions which arise either at common law or at equity is not worth knowing. While Mr. Parsons was a perfectly honorable, he was a very dangerous and troublesome antagonist. He was incapable of any trick, or of anything which approached pettifogging, but he fought for his client with all his forces well drilled and under his eye, and woe to the enemy who slept at his post when Mr. Parsons was on the watch. No unfair advantage would be taken of him, but the number and accuracy of the notices which would be served upon him to attend to his duty would leave him little time for repose. He would make the best, and most accurate, and most comprehensive brief that could possibly be prepared, and he would do it in the very shortest time. I must tell an anecdote in illustration of this.

A case had gone up to Washington in which Mr. Parsons was associated with Caleb Cushing and

myself. It involved one of those questions in which, as Judge Story would say, 'there is a distressing conflict of authority.' When the case was in argument, Mr. Cushing came to my chair and said: 'There is a long line of authorities in our favor and not cited in our brief.' I said: 'I am surprised to hear this, for I understood Mr. Parsons to say that he had cited all the authorities in our favor, and I have always known him to be accurate and thorough in his investigations.' 'Well,' said Mr. Cushing, 'he has failed us this time. I have a list of the authorities at my room, and I will ask leave of the court to hand them up in the morning.' He made the request and it was granted. The next morning I met Mr. Cushing in the clerk's office, and he said: 'I was all wrong about those authorities. They are all against us. What shall I do about it?' I said: 'I don't know what you do in such big courts as this, but if I was in one of our Rhode Island courts I should at once go and confess my mistake.' He left for the court-room and I remained to have a chat with some friends in the clerk's office. That day I met Judge Nelson at dinner, and he said, with a pleasant smile: 'You were not in court this morning to hear General Cushing confess his sins. We have had him before us in almost every capacity, but this is the first time we have seen him in the *role* of a penitent.'

I have often thought that if Mr. Parsons had lived, the Sprague litigation, which has dragged its slow length along, would have moved rapidly. Nothing could have added to the learning or ability of the counsel who have fought under the banner of the

vigorous trustee, but if Mr. Parsons had been their associate, the campaign would have been more aggressive than it has been. And if he had enlisted under Generals Butler and Pryor, he would have made it as impossible for Mr. Chafee and his counsel to enjoy any repose as it was for the ancient worthy to sleep while the triumphs of Miltiades were sounding in his ears.

Andrew Johnson appointed Mr. Parsons United States district attorney for this district, and while he held the office he discharged his duties with promptness and fidelity. But Wingate Hayes was not an easy man to turn out of office, and he set about preventing the confirmation of Mr. Parsons by the Senate, and the nomination of Mr. Parsons was withdrawn and Mr. Hayes was reappointed. This was a fresh illustration that, except in the case of Colonel Van Slyck, the official life of a Democrat in Rhode Island is 'short and precarious.'

A very pleasant feature in the character of Mr. Parsons was his admiration for his father. He kept up an active correspondence with him, and delighted to read to us the vigorous letters in which the old gentleman predicted the ruin of the country under Republican rule. These letters of Judge Parsons, a somewhat intimate acquaintance with Jeremiah S. Black, and a careful study of Curtis' Life of James Buchanan, have convinced me that Pennsylvania Democrats are a very respectable and very peculiar class of men. The facility with which they reconcile their strict construction of the constitution, their opposition to special legislation and their persistent

support of the protective tariff, is something wonderful.

Mr. Parsons was as agreeable in all social relations as he was competent and successful in his professional work. He was familiar with the best books, and he had a passion for the drama. Those who have heard him personate the great actors whom he admired, will not forget his recitations. He was a far better Metamora and Jack Cade than Forrest himself. But why attempt to describe a man who was the light and life of every social circle in which he came? There are some very good and very useful men whose character and career can be as easily depicted by the biographer as an engineer can explain the construction and operation of the Erie canal, but who that has seen it will attempt in words to enable others to see the mountain stream, fringed here with forest and there with meadow, as now in sunshine, now in shadow, it laughs and sings on its way to the sea?

They who commenced life with James H. Parsons are, many of them, still active men, but they have 'rounded the Tattenham corner of existence, and are on the home stretch,' and are beginning to live in memory, and among their pleasant recollections will be their intercourse with the friend whose early death they lament.

XX.

THOMAS A. JENCKES — THE PUBLIC ESTIMATE OF HIM — COLLEGE LIFE — EARLY FRIENDS AND CLIENTS — POLITICAL LIFE — BUSINESS REVERSES — CHARGES FOR PROFESSIONAL SERVICES — MORAL AND INTELLECTUAL QUALITIES.

An old Philadelphia lawyer told me that when he was a young man he was one day in company with Chief Justice Marshall, and ventured to ask him who was the greatest lawyer that ever appeared before him in the Supreme Court of the United States, and being answered that it was William Pinckney, replied: 'What, sir, superior to Daniel Webster or Horace Binney?' 'Yes,' said the chief justice, 'head and shoulders above either of them.' I have no reason to doubt the authenticity of this anecdote, and it simply shows that even John Marshall could talk nonsense. To discuss the question of superiority between these three men reminds me of our old school-boy debates, in which the question was: 'Which was the greater man, Julius Cæsar or Napoleon Bonaparte?' or again: 'Which is the more desirable, friendship or love?'

When a member of the bar said to me, the other day: 'If you omit Thomas A. Jenckes, your notices of the Rhode Island bar will be like the play of Hamlet, with Hamlet left out.' I did not quite agree with him. In the legal drama which has been enacted here in Rhode Island, there were men who lived before

Mr. Jenckes, men who lived and contended with him, and men who survive and honor him, who were in many things his equal, and in some things his superior. But there are reasons which would make it prudent for me not to attempt to say anything about Mr. Jenckes. It seemed but yesterday that he walked these streets, the observed of all observers, conscious of his great powers and of his self-control. When any important litigation was spoken of, all men wanted to know what Mr. Jenckes thought about it; in every political movement, the position of Mr. Jenckes was an important factor.

The presence of many distinguished men at the funeral services in his country home emphasized the sentiment expressed by one of his neighbors: 'We have lost a great man.' His old friend and life-long political associate, Henry B. Anthony, published in the Providence *Journal* a most appropriate and graceful tribute to his memory. At the meeting of the bar, Charles S. Bradley, with feeling and eloquence, made a discriminating estimate of the character and career of his distinguished classmate. Chief Justice Durfee responded to the resolutions of the bar in a comprehensive and acute analysis of the powers of Mr. Jenckes as a lawyer and a jurist. In the columns of the *Journal*, Edward H. Hazard said just and kind things of his old partner; and Miss Jacobs, in a beautiful letter, gave a most accurate account of some of the things in her friend which were only shown to those who came very near to him in private and domestic life.

But for all this, I intend to say something about

Thomas A. Jenckes. He was in the junior class when I entered Brown University. We were members together of the United Brothers Society. We were brethren of the Alpha Delta Phi. But I did not see much of him. I do not remember that he mingled much with the students in their social and convivial meetings. He took long walks alone, and there was much talk in the college of his wonderful attainments, especially in mathematics. At that time, and ever since, his class has been much talked of as one of the most distinguished which has ever graduated at the University. The valedictorian was Charles S. Bradley. The salutatory oration was assigned to William Ames, who was a classical scholar of the very first rank. The classical oration was delivered by Marcus Morton, the present chief justice of Massachusetts. The philosophical oration was assigned to Mr. Jenckes, but he delivered a poem at Commencement. Dr. Robinson, President of the University, was in the same class, and George Van Ness Lothrop, now and for many years at the head of the bar in Michigan.

After graduating, Mr. Jenckes entered the office of Samuel Y. Atwell as a student at law. At the bar meeting after his death, Mr. Bradley mentioned the circumstance that while in the office of Mr. Atwell, Mr. Jenckes wrote to him in a rather desponding mood, expressing a doubt whether he would ever be able to master the difficult science of the law. Joseph Story had the same trouble when a boy; he cried because he thought he never could make a lawyer. I have known some young men who never met

with any such difficulty, but who never came to anything. In one of his novels, Bulwer makes one of his characters rebuke a self-confident boy in these words: 'Young magpies chatter, boy; young eagles measure in silence the distance between their eyrie and the sun.'

Mr. Jenckes was admitted to the bar in 1840, about the time when I entered the office of General Carpenter as a student, and for some months we boarded together with Mrs. William Smith, on Angell street. We had a common sitting-room, and during the pleasant days of September and October we saw much of each other. I was just getting up from a severe typhoid fever, and we had peaches and port wine. Mr. Jenckes never used tobacco in any form, and in deference to his wishes, I abstained from its use when with him. We read poetry together, and had many discussions about books, in which we generally agreed, and occasionally about politics, in which we did not much agree. Mr. Jenckes was on the winning side with Harrison and Tyler, and I was with the losing cause of Martin Van Buren. But we came to understand each other pretty well. After this time I was not intimate with him, though we were often associates and opponents at the bar. Near the close of his life I saw more of him, and a very short time before his death I passed some hours with him at his home in Smithfield.

I think I know something of myself, and among the men whom I have known, there is no one I think who made a juster estimate of me, and it gives me great pleasure to remember that with all my faults,

of which he was well aware, his estimate was on the whole generous and kind.

I do not think he was well fitted for early success at the bar; his manners were not popular, and he had little disposition or power to blow his own trumpet. But he had some advantages. Samuel F. Man was then a leading citizen of the State; he had known Mr. Jenckes from a boy; was well acquainted with his superior abilities and attainments, and took great pains to make them known. Edward H. Hazard was his law partner, and had extensive connections with the leading men of the State in politics and in business. Very soon after Mr. Jenckes was admitted to the bar, an important question arose upon the construction of the bankrupt act of 1841. Upon this question John Whipple, Samuel Y. Atwell and Richard Ward Greene gave concurrent written opinions. Mr. Jenckes gave an opinion in opposition to that of these leaders of the bar. When Judge Story came up to hold his court, he sustained the opinion of Mr. Jenckes.

In delivering his opinion, Judge Story said: 'I drew this section of the statute and I know what it means,' apparently forgetting at the moment that the meaning of a statute may be one thing and the meaning of its author quite another, and that by reason of this distinction, differences of opinion arise between lawyers and a 'distressing conflict' among decisions of courts. I do not know which one of the lawyers was right in his construction of the statute, but Judge Story alone had the power of giving the force of a decree to his opinion.

Not long after this, Richard Ward Greene was made chief justice, and apparently the successor to his large business would have been Samuel Ames; but Mr. Ames was not a good listener, and Mr. Greene had few equals in that capacity. Several leading business men, finding that they could not get so much attention from Mr. Ames as would have been agreeable to them, went to the office of Mr. Jenckes and found in him a listener quite equal to their former counsel, Mr. Greene. From these, and other causes which I pass over, Mr. Jenckes early found himself in possession of a very large professional business, and his clients found him quite equal to the management and control of the most important affairs. During his life, Mr. Jenckes was the subject of much ignorant admiration and equally ignorant censure. But this is certainly true, that the ablest men who came in close contact with him were those who had the highest opinion of his powers. Not to speak of his brethren of the bar, such men as James F. Simmons, Welcome Farnum, Samuel Boyd Tobey, Henry L. Kendall and old Governor William Sprague entrusted him with control of their most important litigations, and were never weary of commending his transcendent powers.

In 1850 an important case, in the preparation and argument of which Mr. Jenckes took a leading part, was Hodges *vs.* the New England Screw Company. The questions involved, and the important business and social relations of the parties, and the standing and reputation of the counsel, attracted much public attention. The plaintiff was represented by Benja-

min Cozzens, Charles S. Bradley and Benjamin R. Curtis. Mr. Jenckes and Samuel Ames represented the defendants. The decision of the court was looked for with much interest, and its opinion was delivered by Richard W. Greene, then recently appointed chief justice, and was in favor of the defendants. Mr. Jenckes gained much reputation for his management of this case, especially as he won a victory over very distinguished opponents, and, as many well-informed people at the time were inclined to think, rather against cards.

George H. Corliss employed Mr. Jenckes to assist in the protection of his inventions, and Horace H. Day employed him in his crusade against the great india-rubber monopoly. He was thus introduced to a large practice in patent causes in this and in other States, and soon attained a very high, if not the highest, reputation among the patent lawyers of the country. For this class of cases he was very well equipped. He was a good mechanic, mathematician and chemist, and his subtle and powerful intellect was attracted by what Judge Story calls the metaphysical questions of the patent law.

In the contest over the will of Colonel Halsey he dealt with the most abstruse questions in the law of real estate, and successfully contended with such lawyers as George Wood and Benjamin R. Curtis, and so, in his early manhood, he stood in the front rank of his profession in this State and in the country.

In October, 1840, Mr. Edward H. Hazard resigned his office as clerk of the House of Representatives in

the General Assembly, and his partner, Mr. Jenckes, was appointed in his place. He held the office for four years. When the Dorr troubles came on, the Governor was surrounded by a council, and of this body Mr. Jenckes was the private secretary. He was one of the secretaries of the convention which framed the present constitution of the State. At this period of his history there was much less machinery and more discussion in the management of political questions than at the present time, and the leading men of the State took a much more prominent part in public affairs than they do at present, and these men had an opportunity to know Mr. Jenckes and to appreciate his merits, and when afterwards he came into the General Assembly himself, he was perfectly familiar with all the recent legislation of the State.

For a long time there had existed in this State a system by which a debtor in failing circumstances might make preferences among his creditors. Mr. Jenckes thought this system a bad one, and anticipating his labors in Congress in favor of a general bankrupt law, he undertook to secure the passage of an act to provide for the equal distribution of the property of debtors among their creditors. He had the courage of his convictions and he supported them with great ability. But he found himself in conflict with a system thoroughly entrenched in the traditions and prejudices of the people of this State, and he was defeated. I remember that his old friend, James S. Ham, who sat near him when the result of the vote was announced, afterward said: 'Don't talk to me about Mr. Jenckes having no feeling; he was bitterly disappointed at the result.'

During what was called the Hazard and Ives controversy, Mr. Jenckes made a speech in the General Assembly which, I think, has been a little overpraised and its influence very much overrated. That a proper construction of the constitution deprives the General Assembly of all judicial power had been settled by the Supreme Court in the case of Taylor *vs.* Place, and nothing could be added to the reasoning by which the decision was sustained in the opinion of Chief Justice Ames. That such ought to be the construction in every free State was the uniform opinion of jurists and statesmen. There never was a simpler case in law and in its facts than the case of Ives *vs.* Hazard, and it required no great ability to make this appear. The strength of Hazard's petition for a new trial was due to other causes than the merits of his case, and the great speech of Mr. Jenckes had little or nothing to do with its overwhelming defeat. That defeat was due to the newly discovered testimony which caused Mr. Van Zandt, who had supported the petition, to withdraw his support, and to a short speech by Nathan F. Dixon, which carried home to every member the conviction that the petition ought not to be granted. But the oration of Mr. Jenckes was printed and widely circulated, and gained him much reputation in the country at large. It was a very successful vindication of Mr. Ives, and a satisfaction to him and to his friends, and they did not forget the services of Mr. Jenckes.

In 1863 the Republican party in this district nominated Mr. Jenckes for Congress; the Democratic party nominated Charles S. Bradley. Mr. Jenckes

invited his opponent to a public discussion of the questions involved in the election. The invitation was accepted, and the debate took place in Howard Hall in the presence of a very large audience. Each party had reason to be proud of its candidate. I shall not attempt to decide to which of the speakers the laurel crown for oratory should be awarded, nor shall I attempt to pass any judgment upon the questions which they discussed. The final verdict of history upon the causes and consequences of the great civil war will be rendered in a distant future. What we certainly know is, that good and able men contended on each side, and that in the great struggle an institution in conflict with the fundamental principles of our government, and with the inalienable rights of man, was removed. Whether the war might have been avoided we shall never know. The remote consequences of the great victory will be disclosed to the next ages. According to Mr. Webster, we now know pretty well what were the results of the battle of Marathon; but after four hundred years we are still discussing the question whether the revolt of Luther against the old church was necessary; and one eminent man whom Boston, after its fashion, has recently canonized, has pronounced the French revolution to be a stainless transaction.

Mr. Jenckes entered the House of Representatives with a great reputation, to which he added much during his term of service. He took charge of the bankrupt bill and secured its passage. With some amendments, which by its practical operation were shown to be expedient, it should have remained the

permanent law of the country, as it is a monument to the ability and learning of its author. In the Committee on Patents he performed much labor, and rendered important service. The act which he prepared for the regulation of the civil service was a logical and consistent system, and represented the profound convictions of its author. It failed partly because it attacked abuses strongly entrenched in the interests of political parties, and partly, I think, because the system which it proposed to inaugurate is alien to the habits and opinions of the people of this country. The energy with which all parties are now advocating civil service reform, and the manner in which the reform is conducted, is an apt illustration of the proficiency of American politicians in the great art of finding out how not to do it.

Mr. Jenckes finally lost his seat in Congress by means over which it is just as well, perhaps, to throw a veil. There was no imputation, however, upon the ability or integrity of his successor, Benjamin T. Eames, whose long and faithful service was creditable to himself and useful to the State. But Mr. Jenckes should have been transferred from the House to the Senate. In that body would have been the appropriate field for the exercise of his matured powers. He would have found there few equals and no superior.

He narrowly missed an appointment as one of the managers of the impeachment of Andrew Johnson, and I think he was keenly disappointed at his failure to receive this appointment. I heard him compare this proceeding with that in which Cicero arraigned Verres for the plunder of Sicily; and with that in

which, in the name of human nature itself, Edmund Burke impeached the great pro-consul of India. And I think he did not overestimate his own powers if he thought that, as the representative of the American people, he could make the crimes of Andrew Johnson outrank in history the crimes of Verres or of Warren Hastings. At all events, if he had been one of the managers, the forensic honors of the great trial would not have remained where they now are, with the counsel for the President.

Not long after this, a large manufacturing corporation in which he was a stockholder and an officer failed, and the failure swept away the earnings of his laborious life, and left him in middle age a poor man. As is usual in such cases, his summer friends went away with the summer weather. 'I suppose,' he said to me one day, 'that these people who have been paying court to me all these years, and now pass by me without speaking, think that I do not notice their conduct. They make a very great mistake.'

But he bated no jot of heart or hope. He had not been unduly elated by prosperity, and he did not faint in the day of adversity. His clients did not desert him, and with failing health but unfaltering courage, he kept steadily at work until the summons came which we must all obey, and I think the messenger was not unwelcome.

I have heard the remark attributed, I know not with what truth, to Mayor Doyle: 'That the geographical formation of our city is favorable to the free circulation of gossip, inasmuch as it all passes at least twice every day across the Great Bridge.' However this may be,

from the days of Athens even unto now, the collection and distribution of misinformation in all free communities has been an active industry, needing very little protection. Any prominent citizen is liable to be very much talked about and very little understood, and this for many years was the case with Thomas A. Jenckes. Remarkable and contradictory stories were told about him. It was said that he charged exorbitant fees. There was for a long time in circulation a statement which, I believe, lingers and holds in corners even to this day, that he received a great sum as assignee of a large estate. It is within my knowledge that he received nothing for his services as assignee, and that the estate was indebted to him in a considerable sum for disbursements in its behalf. One of his clients told me that he was very much surprised when he called upon Mr. Jenckes for his bill, which he supposed would be at least five hundred dollars, to find that it was only twenty-five dollars.

Such contradictory stories about charges for professional services arise from causes easily understood, and are perfectly consistent with the honesty of both parties. The lawyer estimates his services according to the labor, time and responsibility involved, and what seems to the client a very small matter, may seem to his counsel of great importance; and again, what seems to the lawyer to be a small matter, may have a different appearance to a client. When I was with Mr. Ames, we were called upon to draw a mortgage deed to secure a large indebtedness to several banks in this city. It required several long consultations with the officers of the different banks,

and an examination of the records in the town of Smithfield; and the manual labor of writing the deed was considerable. For this service Mr. Ames charged fifty dollars. There was much excitement among the bank officers of this city over the story that Mr. Ames had charged fifty dollars for drawing a deed. This was nearly forty years since. Probably a similar charge would not excite so much surprise now. Soon after this, the President of one of the banks who was very friendly to me, came to the office and said: 'We want five deeds drawn; but we cannot afford to pay any such sum as you charged for that deed the other day. We will pay you twenty dollars for drawing these deeds.' I said: 'Very well, if you choose; but as they are simple quit-claim deeds, the ordinary charge would be a dollar each for the five deeds.' It is needless to add, perhaps, that I drew the deeds, received five dollars for the service, and considered myself well paid.

Another class of stories about Mr. Jenckes was, on the one hand, that he was a very successful, and, on the other, that he was a very unsuccessful lawyer. The explanation is simple. He was leading counsel in a large number of important cases, and sometimes the decision was in favor of his client and sometimes against him. This is very apt to be the case. The court and jury have the last guess. John Whipple said, after forty years' experience: 'I have lost about as many cases which I ought to have won, as I have won cases which I ought to have lost.' Not long before his death, a deed was submitted to Mr. Jenckes for his opinion. Several legal opinions had been given

about the deed; some one way and some another. After a careful examination, Mr. Jenckes said: 'You had better go to the Supreme Court and get a construction of this deed, and that will be the law, whether it is the law now or not.'

Another class of stories was, that he was a cold man, having no feeling of his own, and wholly indifferent to the feelings of other people; and, on the other hand, that he was the most kind and genial of companions. Here, again, the explanation is simple. When absorbed in his work he took no notice of anybody; in his hours of relaxation, and when in company with people whom he liked, his conversation was most instructive and fascinating.

I am not about to attempt an exhaustive analysis of the character of Mr. Jenckes. The more there is of a man, the less likely is there to be a general consent of opinion about him. Every new student of Cicero wants a new life of the great orator to correct the errors of his previous biographers. I have just read a fresh and very interesting Life of Lord Bacon, in which the errors of Montague, Macauley and Spedding are clearly pointed out; and I expect to read other lives of Bacon. The 'Life of Buchanan,' by Mr. Curtis, is very able and impartial; but Mr. Blaine does not agree with him, and here comes Mr. Patterson, correcting the errors both of Blaine and Curtis.

I shall merely set down a few things which I think I know about Mr. Jenckes. He had a very rare power of continuous labor. The mental machinery of most men gets tired after a few hours. It is said that Mr. Webster could run at full speed only four

hours. I have known Mr. Jenckes to work twenty-four hours steadily and not seem exhausted; and his work was real work. He did not putter. His concentration upon the subject in hand was not equalled by that of any other man whom I have known. Nothing could disturb or divert him. In the most exciting crisis of a trial in the court, he would be perfectly calm. As the result of this habit, his note-books were models of fullness and accuracy. His neat, legible handwriting would be an excellent model for the young ladies who, in these days, cover sheet after sheet with large and illegible scrawls.

I never knew a man who took less pains to explain his own conduct and meddled less with the conduct of other people. He took the advice of Mr. Emerson, and having taken his own position waited patiently for the world to come around to him. But on proper occasions he let it be understood that he was not to be trifled with. A man very eminent in social and business relations, but whose head was not always level, had been very busy in the circulation of a report that Mr. Jenckes had mismanaged some professional business, and emboldened by the fact that Mr. Jenckes had taken no notice of this, ventured to make the statement in his presence. Mr. Jenckes quietly said: 'Perhaps you had better not repeat that remark, you may be called upon to prove its truth; and you certainly do not know that it is true.' The subsequent silence of this gentleman was noticed by all his friends.

In the court-house in Brooklyn, New York, some rather vague complaints were made against Mr.

Jenckes. As I walked with him from the court-house to the ferry-boat, he said: 'Payne, what do these people mean by these insinuations?' I told him what they had said to me. He said: 'They may possibly find out their mistake;' and then proceeded to point out to me some interesting features of the shipping in New York harbor. I think these people did find out their mistake. At all events, I never heard any repetition of their complaints.

His knowledge was varied, accurate and minute. The dyer's hand, subdued to that it works in, has become the symbol of the man who is known by his profession; but Mr. Jenckes, though a good lawyer, was not merely a lawyer. His knowledge of books covered all classes — science, literature, poetry and art. He would rest himself, after leaving the court-house, with whatever came readily to hand. It might be a book of Homer in the original, or the 'Papers of the Widow Bedott.' He was equally familiar with the last novel of Dickens or the last work on astronomy, and he could repeat from memory long passages from a new poem by Tennyson before most people knew that it had been published. I thought I knew something about Jonathan Edwards; I was in some sense brought up on his works; but I found that Mr. Jenckes had a better edition than mine, and he was able to call my attention to an incident in the life of the great theologian which had escaped my notice, and which showed that he might have been a great natural philosopher, so familiar was he from a boy with the habits of insects and animals.

Mr. Jenckes himself knew all about birds, and trees,

and flowers. One of his friends said to me: 'Poor as I am, I would give a large sum of money to be able to write down a half-hour's talk about flowers which Mr. Jenckes made to me a short time before his death.'

Mr. Jenckes had also the faculty of letting other people enjoy themselves in their own way. It is not proper for me to enter the family circle, or I could tell of the love that was there cherished for him; and all who were employed by him, from the man who drove his horses to the student who assisted him in his professional work, were never weary of telling of his kindness and generosity. Everything about this man was strong. His physical frame was robust; his intellect was at once powerful and acute; his passions were strong, but under rigid control; his affections were at once tender and firm, but he did not wear them upon his sleeve.

In one of the friendly notices of Mr. Jenckes it was suggested that he might, perhaps, have been deficient in judgment. This was resented by his classmate, Judge Bradley, who said that when Mr. Jenckes took the seat of judgment, his decisions were sound and reliable. In application to his opinions as a lawyer, I think this distinction was well taken. It was thought at one time that Mr. Jenckes might have a seat upon the bench of the Supreme Court. I think his judgments would have taken rank with those of the great chancellors. But as a politician I think he lacked the tact which insures success. He had confidence in the results of his own thinking, and was either ignorant or careless of the art of adapting his

arguments to the popular ear. It was well said of the great speech of Edmund Burke in the House of Commons, on 'Conciliation with America,' that 'while it carried conviction to thoughtful men, it made no impression upon the legislative rabble to which it was addressed.'

XXI.

JOSEPH M. BLAKE — PLINY MERRICK AND NAT. MORTON — THE AVERY TRIAL — MANAGEMENT OF CASES — THE ANGELL WILL CASE — HIS MODE OF ARGUMENT AND CONSULTATION — INTELLECTUAL CHARACTERISTICS — SUCCESS OR FAILURE.

My friend, Robert Sherman, who was brought from Massachusetts into Rhode Island by a change of boundary, and who knows all the bright men and all the good stories in both States, met me the other day and said: 'If you have anything to say about Mr. Blake, don't forget Pliny Merrick and Nat. Morton.'

Mr. Blake was employed as counsel in a case in Bristol county, Massachusetts. At the conclusion of his argument, Morton rose and said: 'May I say a single word to the jury?' 'As many as you please,' said Mr. Blake. 'Gentlemen,' said Mr. Morton, 'when my client retained me in this case, he warned me to beware of that Mr. Blake from Rhode Island, for I understand that no jury can resist him.' This was not the exact expression used by Mr. Morton, but it conveys his meaning, and is more decorous and suitable for publication. 'Gentlemen,' said Pliny Merrick in his charge to the jury, 'I have been upon the bench for fifteen years, and this is the first time I have felt called upon to warn a jury against being unduly influenced by the argument of counsel.'

The anecdote illustrates the character of each of the three men. Joseph M. Blake had great influence

with juries. Nathaniel Morton, who graduated with the highest honors of his class and early attained a front rank at the Massachusetts bar, was a bit of a wag; and Pliny Merrick, though a learned lawyer and an upright judge, was liable to 'slop over.' It is quite proper for a judge to point out to a jury any misrepresentations of the evidence, or any misstatement of the law by counsel, but he goes beyond his province when he tells the jury not to be influenced by the argument of counsel. A clear statement of the law by the court, and a judicial summing up of the evidence, will sufficiently guard a jury against the undue influence of counsel.

Mr. Blake was born in Northfield, Massachusetts, on the thirteenth day of July, 1809, and died in Bristol, Rhode Island, on the eighth day of November, 1879, having lived a little more than the allotted term of seventy years. I think he must have spent some of his early years in the State of Vermont, for I have heard him relate that on his way from Vermont to Rhode Island he heard a debate in the Senate of Massachusetts. 'They were discussing,' said he, 'what it was that made the people of Massachusetts superior to any other people in the world. They took it for granted that they were superior, and were trying to find out what made them so.' Mr. Blake was one of the junior counsel for the defense in the celebrated trial of Ephraim K. Avery, and after the lapse of nearly half a century he remembered every minute circumstance connected with that trial, and would describe with keen analysis the characters of the leading witnesses and of all the counsel in the case. He fairly

glowed with enthusiasm himself when he described the appearance of Jeremiah Mason as he drew near the close of his great argument. 'His face,' said Mr. Blake, 'was transparent and shone like the face of an angel.' Mr. Blake succeeded Albert C. Greene as attorney general of the State. General Greene had held the office for eighteen years, and when the mantle of that eminent counsellor and advocate fell upon the shoulders of a young man, there was some question as to whether he would be able to wear it. It was a question soon answered by the eminent success of Mr. Blake in several important trials.

I knew Mr. Blake very well, and I feel how inadequate must be any attempt to give a correct account of the impression which he made upon me as a man and as a lawyer. The difficulty arises, in great part, from the peculiarity of his manner. What he did and said was of such intrinsic merit as to be worth noticing, but his manner gave additional interest to all that he did or said, and of that manner it is impossible to give anyone who was not acquainted with him any correct account.

Mr. Blake once brought an action against an officer of the Stonington railroad in behalf of a man who had been put off the cars in a cold night, and claimed to have suffered severe injuries. George Rivers was associated with Mr. Blake as junior counsel. Edward H. Hazard and Nathan F. Dixon conducted the case for the defendant. This was soon after I was admitted to the bar, and I was employed by Mr. Blake to take notes of the testimony. Soon after the trial commenced, Mr. Blake was ill and went to his

room in College street, and remained there for nearly a week, and until the testimony in the case was concluded. During all this time I went to his room twice a day to read the notes of the testimony. He was in bed, and suffering severe physical pain, but he gave close attention to the testimony and asked pertinent questions about the appearance and manner of the witnesses. Mr. Rivers expected to have to close the case for the plaintiff, but on the morning when he was to commence his argument, Mr. Blake appeared in the court-room. Mr. Webster, when about to deliver an oration in Faneuil Hall, was never more carefully dressed than was Mr. Blake on this occasion. He wore black doeskin pantaloons, a black satin vest, and a blue dress-coat with brass buttons. It was long before the infirmities of his late years had begun their work, and a more noble presence was never seen in the court-room. Those who heard his argument have not forgotten it. He was not a man to be deprived of any of the advantages which were incidental to his enforced absence from the court-room during a trial, and when, now and then, he was interrupted as having misstated the evidence, he made ample apologies to the court and jury and begged to be excused; but I am not sure that the jury always drew a clear distinction between what he stated and what the witness had sworn to. Mr. Blake having suggested that an important witness for the plaintiff had been induced by the defendant to run away and be out of reach of a summons, Mr. Hazard rose and said: 'I am very sorry to interrupt Mr. Blake, but there is no evidence that we induced this

witness to run away.' 'Oh,' said Mr. Blake, 'then you did induce him to run away, only there is no evidence of it.'

The evidence of physicians in the case, taken by depositions in Boston, was very clear that the plaintiff suffered such internal injuries that he could not possibly recover, and the description by Mr. Blake of the barbarous treatment which the plaintiff had received at the hands of the defendant (who, by the way, was a most kind and amiable gentleman, and who, as I remember the testimony, had simply done his duty as an officer of the road), and of the terrible sufferings of the plaintiff and of the lingering death which was his certain doom, drew tears from jury, court and spectators. The jury returned a verdict for ten thousand dollars, the full amount of damages claimed in the writ. The defendant had not sufficient means to pay the full amount, and there was a compromise. Soon after the amount agreed upon was paid, some people were very much surprised to see the plaintiff walking about the streets apparently as well as ever. When I asked Mr. Blake about this, his reply was: 'It is the most remarkable thing I ever knew. As soon as the money was paid he began to get well, and I believe he is now in perfect health.' Those who knew Mr. Blake will probably be able to bring before them the manner and tone in which this remark was made.

The contest over the will of Eliza Angell is rapidly passing from living memory and will soon become a vague tradition. But it is entitled to rank among celebrated cases. Miss Angell was a maiden of mature years, of distinguished ancestry, pronounced

opinions, eccentric habits, and possessed of a valuable real estate. She was a member of the Baptist church, and had many friends among that communion. By an instrument purporting to be her last will and testament, she devised her estate largely to charitable objects, conspicuous among which was the education of young men for the Baptist ministry. Not long after her death some of her friends were surprised by a notice that a portion of her heirs proposed to contest her will. William R. Staples acted as her executor, and William H. Potter was his counsel. Joseph M. Blake acted as leading counsel for the contestants. The case was three times tried. There were two disagreements, in each of which a majority of the jury were against the will, and it was set aside by the verdict of a jury on a third trial. The case interested a great many people and lasted a long time, during which the attention of the community was fixed upon the peculiarities of Mr. Blake as an advocate, and the final result was generally attributed to his wonderful skill and ability. Some inclined to think that he was largely aided by the untiring industry of his associates and by the zealous activity of some of the heirs.

About the merits of the case I am, perhaps, not a competent judge. Experts of great experience and ability, including the late Dr. Ray, after a review of the whole testimony, expressed very positive opinions that Miss Angell acted under a delusion as to her relations, and, under that delusion, had executed an instrument which was not her will. But I know it seemed to me at the time that if the sayings and doings of any eccentric person, through a life of

seventy years, were collected together they would make as strong a case of insanity as was made out in the case of Miss Angell. But of this I am sure, that after diligent inquiry into the facts, Mr. Blake became fully persuaded in his own mind that he could convince twelve men that Miss Angell was insane. He was not a man to go into the trial of a case relying simply upon his resources of wit and eloquence.

The very common notion that juries can be carried away by mere talk is a very shallow one, and not entertained by successful jury lawyers. They rely upon facts and upon their knowledge of men. They first convince themselves, and then exert their full powers to make the twelve jurymen see things as they do. When Rufus Choate undertook to defend Tyrrell, he knew that his theory of somnambulism was a possible one. When he refused to undertake the defense of Professor Webster, it was because his knowledge of men told him that no defense was possible.

In the trial of this case all the peculiarities of Mr. Blake as a jury lawyer were made to appear. The author of Ion said that the trial of a case at *nisi prius* was the enacting of a drama. Mr. Blake had genuine dramatic power. He was a great actor. His attitudes, the tones of his voice and every incident in the case were all carefully regulated by him. From the beginning to the end of the trial he was the central figure. He was always on the stage; the jury, the court, the opposite counsel, the attending members of the bar and all the spectators were constantly watching Mr. Blake, and he was as constantly doing or say-

ing something to attract and deserve attention. He managed to keep the jury in full sympathy with him and with his case, and when it was necessary to do this, he would provoke a controversy with the bench or with the opposite counsel or with some reluctant or unfair witness, and when he had secured a good grievance Mr. Blake was irresistible.

I remember an instance of this in the trial of a case before Judge Woodbury, at Newport. Mr. Blake's client had brought an action against an insurance company. There were strong equities in his favor, but there were some technical difficulties in his way. Mr. Blake perceived early in the trial that Judge Woodbury was inclined to rule the law against him, and he soon got into a controversy with the court, in the course of which that usually imperturbable magistrate lost his temper. When he came to argue the case to the jury, Mr. Blake made no allusion to the adverse rulings of the judge, but dwelt very much upon the prerogatives of a Rhode Island jury, and of their right to take the decision of cases into their own hands. He made some very complimentary remarks about Judge Woodbury, in the course of which he let the jury understand that he came from another State, and was, perhaps, not fully imbued with Rhode Island notions of equity and justice. This line of remark inflamed the temper of the judge, and he made a very strong charge against the plaintiff. The jury returned a verdict for the plaintiff, and the foreman was heard to say as he left the court-room: 'We will teach that New Hampshire judge that he can't tell Rhode Island juries what kind of verdicts to render.'

In the Angell trial, Dr. Wayland was a witness in support of the will. He was an intimate acquaintance and a firm friend of Miss Angell, and fully believed in her sanity. Mr. Blake had great skill in the management of witnesses. He once said to me: 'I should be very sorry to draw out of any witness anything that would hurt my case, nor do I know that I ever did such a thing.' Members of the bar who heard him examine and cross-examine witnesses will understand the full force of this remark. In examining Dr. Wayland he led the witness along until he made it very clear to the jury that Miss Angell had shown none of her eccentricities to her venerable friend and pastor. The executor then undertook to examine Dr. Wayland as a medical expert. The Doctor, early in life, had studied medicine for a short time. Mr. Blake contended with great energy that he was not qualified as an expert, but the court admitted his testimony. In answer to the question whether he considered Miss Angell insane, Dr. Wayland said with much emphasis, and in a manner which all his old pupils will recognize: 'I can truly say, gentlemen of the jury, that in all my long acquaintance with Miss Angell it never entered my mind to question her perfect sanity.' Mr. Blake put no questions in cross-examination upon that subject, but when he came to his argument he said: 'Why, gentlemen, Dr. Wayland admits that he don't know anything about her sanity or insanity. He never paid any attention to the subject.' Then he told, in reference to Dr. Wayland's medical studies, the old story of the country boy who applied for a situation as a seaman, admitting

that he had never been on board a ship, but claimed that he had once tended a saw-mill. The fallacy of this argument and the absurdity of this illustration excited the just wrath of Dr. Wayland, but I think they had much weight with the jury.

One strong point in the argument of this case was the internal evidence of insanity derived from an examination of the will itself, and I think no one who remembers the trial will forget Mr. Blake's discussion of that part of the will which provided for the education of young men for the ministry. His object was to show that young men who were educated by charity would make very poor ministers, and he found excellent soil in the jury for the cultivation of that line of argument.

His addresses to the jury in this case were very long and elaborate, lasting in some instances more than two days. But no jury ever tired of listening to Mr. Blake. In this case he cited many instances that had fallen under his observation of people who, though really insane, were in the eyes of all ordinary observers perfectly sane; and these stories had all the fascination of romance. Then he gathered together all the queer things which, during a long life, Miss Angell had done and said, and grouped them in such a way that it seemed impossible that the good woman could have been in her right mind.

Mr. Blake was accustomed to make long arguments. I have heard him say that he never meant to stop until he saw that all the jury were with him, or that some of them were dead set against him. He therefore did not like the two-hour rule. When he was

about to commence his argument in a case in which I was with him, I said: 'Don't forget the new rule, Mr. Blake.' He took no notice of my remark, and when the chief justice said: 'Mr. Blake, your time is up,' Mr. Blake said, with an astonished air: 'What time does your honor refer to?' 'The new rule,' said the chief justice. 'Is that rule published anywhere?' said Mr. Blake, in a tone of very earnest inquiry. 'Not that I know of,' said the chief justice. 'Then,' said Mr. Blake, quoting the great historian, 'miserable is the condition of that people where the laws are not promulgated.' He was allowed a dispensation, and went on with his argument.

On one occasion when Mr. Blake was drawing some very fine distinction, the judge said, impatiently: 'Mr. Blake, that is quibbling.' Mr. Blake at once cited a case in which an eminent judge had said: 'It is the right and duty of counsel to quibble for the protection of his client,' and proceeded to explain what quibbling was, until he made it appear to be the most dignified, useful kind of professional work.

On another occasion he was pressing a point upon the attention of the court, which had already been decided, when the judge said: 'Mr. Blake, take your seat.' Rising to his full height, Mr. Blake said: 'I shall not do it. Your honor has the right to forbid me to speak, but you have no right to dictate the position which I shall occupy in the court-room.' This was a new question, and, so far as I know, is still held for advisement. Mr. Blake did not take his seat.

He once made a motion for continuance before that

solemn magistrate, Nathan Clifford. The motion was opposed by counsel, eminent alike for learning, ability and persistent attention to details. He said that Mr. Blake had neglected the case and paid no attention to it for a whole year. 'Neglected the case!' exclaimed Mr. Blake, 'Does your honor believe that? Why, this man has been like a death-watch in my ear, tick, tick, tick, and I have not been able to attend to anything else.' This was too much even for the gravity of Judge Clifford, and with a bland smile he granted Mr. Blake's motion.

But I must come a little nearer to Mr. Blake in the consultation room. He disliked routine work, and never could be induced to do anything except when the spirit moved. He had appointed an early hour in the morning for a consultation with myself and another lawyer, of very regular and methodical habits. We were punctual to the appointed hour, but for some reason Mr. Blake was not ready to take up the case. I knew his habits very well, and settled myself down for a good time. He began by finding fault with his office boy, giving a very curious account of his habits and commenting severely upon his bringing the wrong kind of wood to make a fire in the office. He then discoursed upon the fitness of different kinds of wood for different purposes, and exhibited as much knowledge of trees as King Solomon had. Here Mr. ——— interrupted him with: 'Mr. Blake, we have come here to consult about this case.' Whereupon Mr. Blake turned upon his associate with an apt quotation from Gibbon's 'History of the Decline and Fall,' followed with a careful analysis of the genius of

that historian, citing largely from his chapter on the Roman law, and pointing out his remarkable accuracy and felicity in the use of language. Here, again, Mr. ——— interrupted with: 'Let us proceed with the consultation of this case.' 'But,' said Mr. Blake, 'how can we consult the case until we have a day assigned for the trial.' I may here remark that this was a point upon which Mr. Blake always insisted with great earnestness. I have often heard him say: 'I cannot work in a case until I know exactly when it is coming on.' Mr. ——— said he did not believe he could get an assignment of this case. Mr. Blake insisted upon it that we ought to have such an assignment, and gave reasons from his knowledge of the judge before whom the motion was to be made, for believing that it would be granted. He then proceeded to analyze the characters of the different judges before whom he had practiced, reaching at last Chief Justice Job Durfee. He then pointed out the difference between the profound wisdom contained in Judge Durfee's little poem called the 'Voyage of Life,' and the selfish ambition exhibited in Longfellow's poem 'Excelsior,' citing at length from both poems. Here Mr. ——— took his hat and left the consultation room. Mr. Blake turned to me with a surprised look and said: 'As Mr. ——— is not ready to take up the case to-day, I suppose we must appoint another time.'

But when Mr. Blake was ready, a consultation with him was a legal education. His memory was a vise, which held the minutest circumstance connected with the case in its grasp. After the case had slept so

long that the memory of the parties and his associate counsel had become indistinct, Mr. Blake would recall every circumstance connected with the previous trial, giving the exact language of every witness; everything that had been said by counsel or the court, giving the exact position in the court-room of every person to whom he alluded, and giving the very tone in which any remark which he quoted was made. If a question of law was under discussion, he showed an entire mastery of its principles, and he could cite the case in which the question had been decided, giving the name of the judge who pronounced the decision, and frequently the very page of the volume in which the case was reported. He listened, not always very patiently, to the suggestions of his clients or his associates, but he never surrendered his own judgment; and he took the control of all the litigation in which he was concerned. In a certain sense he was a very egotistical man, and yet, paradoxical as it may seem, he had neither vanity nor self-conceit, and never talked about himself. But he took charge of the conversation in whatever company he was, and out of a full mind compelled other people to listen to what he had to say. His insight into the character of people with whom he came in contact seemed like inspiration. The sun does not take photographs more accurately than he took the mental likeness of his fellow creatures. His censure and his praise were alike discriminating and just. For what was strong and good he had calm approval, for what was weak and bad he had a clear perception, but he never indulged in sneers or sarcasm. His

humor was genial and abounding. Outside of his profession his knowledge was extensive and accurate, and embraced a great variety of subjects. Among the most delightful and instructive hours which I can recall were those spent in listening to him while he talked of Shakspeare, Burke and Carlyle, and made his criticisms upon the great men in history and the eminent men whom he had known in his own time. Among the eminent men in this country, I think he placed Andrew Jackson, Henry Clay and Thomas H. Benton in the first rank. With all the campaigns of Napoleon he was perfectly familiar. One day he met Caleb Cushing at my office, and this gentleman, whose knowledge was very extensive, but who was sometimes apt to make a display of his recent reading, and who had evidently been looking at a new work about Napoleon, began to talk to Mr. Blake about one of his campaigns. Mr. Blake led him along by questions until it became very evident that his knowledge was more general than accurate, and then turned upon him with a detailed account so precise and clear that it might seem to have been the subject of his special study. Mr. Cushing withdrew from the discussion and changed the subject, and the next day I received a note from Mr. Blake, in which he said: 'Please don't tell anybody how Mr. Cushing exposed my ignorance.'

During the latter years of his life, Mr. Blake was a great sufferer from ill health and did not often appear in court, but those who came near to him knew that his intellect was unimpaired by his great physical infirmity. On one of the last occasions when he

appeared in court, I was equally surprised by his physical weakness and his intellectual power. His opponent referred to Mr. Webster's argument in the Dartmouth College case. Mr. Blake said: 'It is forty years since I read that argument, but I think my friend has not correctly stated its tenor or effect,' and he proceeded to give his own version. I re-read the great argument, and found that the memory of Mr. Blake was accurate in the citation of the thought and the very language of Mr. Webster.

A near friend to Mr. Blake said to me the other day: 'With your high appreciation of Mr. Blake, how do you account for his failure?' 'I don't know what you mean by failure,' I said. 'During my life I have found but one real distinction among men. On one side are those who insist upon having their own way; on the other are those who have learned to say: 'Not my will, but thine.' All other distinctions are on the surface; this is central. A man may set before himself certain objects, such as wealth, official position or fame, and may attain them all, and yet his life may be what I call a failure. On the other hand, a man may fall short of all these things and yet attain what I call a grand success. In estimating men, we must remember what Mr. Emerson says: 'The President has paid dear for the White House. It has commonly cost him the best of his manly qualities.' Mr. Blake missed some of the prizes which fell to the lot of his less gifted contemporaries in this State and out of it, but when the gates were set ajar, I think he carried with him more of what is really valuable than many men who left behind them more of the good things of this world than he did.

XXII.

DIVORCE — THE RELIGIOUS AND SECULAR VIEW — MARRIAGE A CIVIL CONTRACT — NO RADICAL CHANGE IN THE PRESENT LAW NECESSARY — SOME MODIFICATIONS DESIRABLE.

I promised to write of law and lawyers; and when I read Governor Bourn's message, I thought I would try my hand at the subject of marriage and divorce. Since then, Bishop Hendricken has had something to say, several of the Protestant clergy have spoken in their pulpits, the *Journal* has added its suggestions with much ability, and that able, upright and experienced magistrate, Noah Davis, has given the result of his reflections and observations in the *North American Review.*

And still I have something to say. I do not think there is any call for material changes in the law or its administration, here in Rhode Island. The subject may be examined from the religious or the secular point of view. Upon the former it would be impertinent in me to make suggestions. The Catholic church holds very strict and logical doctrines, from the consequences of which it sometimes relieves the faithful by the exercise of the power of dispensation. The Church of England has its own way of looking at the subject, which is not always either logical, consistent or practical. One of her bishops has recently, if he is correctly reported, attributed the bad harvests in England to the Parliamentary attempt to legalize marriage with a deceased wife's

sister. I remember to have read a book in which an eminent Protestant dissenter maintained that it was unlawful for a converted person to be united in marriage with one who was not converted. He went so far as to contend that an orthodox Christian could not lawfully marry a Unitarian. This was a long time ago; and if there should be a new edition of the book, I should like to know what the author would have to say about the lawfulness of a marriage between a girl who held the Andover creed in its strict and literal sense, and a professor of the new departure. There is an old novel, of which I have forgotten the title, in which a good Christian girl had a tremendous struggle as to whether it was not her duty to marry an old-fashioned infidel in the hope of bringing him into the true fold.

I have recently read a novel in which a very brilliant and beautiful young woman, after having been entrapped at an early age into a false marriage with a godless person, excused herself from attending family prayers because she was an agnostic. These matters are too high for me, and I pass them with the simple remark that some of the popular novels of recent times seem to me to be of more dangerous tendency in the hands of young people than many of the works whose circulation in the mail is prohibited by law.

The State very properly treats marriage as a civil contract and also as a social institution, and prescribes the terms and conditions upon which parties shall enter into this contract, and also the terms and conditions under which they may be discharged from

its obligations. That is to say, the State is so far interested in marriage as a social institution that it will not allow parties to enter into this relation, or to release themselves from its duties at their mere will and pleasure. The State also assumes that when parties have entered into this relation and fail to perform its obligations, both individual and social welfare require that the relation should no longer exist. In other words, it assumes that when married people fail to keep their marriage vows, public and private morality require that the bond, which has been actually broken, should be legally discharged. In view of the recent decision of the Circuit Court of the United States, it may be well that our marriage law should be so far modified as to provide that no marriage shall be held valid in this State unless contracted in the manner provided by statute law and duly recorded, otherwise I do not see that our laws on marriage need any change.

I now come to the subject of divorce. It does not seem to me that the frequency of divorce furnishes any reason for a change in the law, unless it can be shown that the statute causes of divorce are unreasonable; or unless the provisions of the law are such that divorces are had upon insufficient evidence. The causes of divorce in this State are 'impotency, adultery, extreme cruelty, willful desertion for five years of either of the parties, or such desertion for a shorter period of time, in the discretion of the court, continued drunkenness, neglect or refusal on the part of the husband, being of sufficient ability, to provide necessaries for the subsistence of his wife, and any

other gross misbehavior and wickedness in either of the parties, repugnant to, and in violation of, the marriage covenant.' In a case in which either of these causes exists and is fully proved to the satisfaction of the court, I think the bond of matrimony ought to be legally dissolved.

I think this law has been, upon the whole, well administered. Among Protestants, lawyers, to some extent, take the place of confessors in the Catholic church. A man or a woman whose domestic relations are unsatisfactory, and who feels in honor bound not to talk upon the subject with relatives or friends, will tell the whole story to a lawyer under color of asking for legal advice. I believe that in most cases this advice is fairly and honestly given, and with the view of bringing about a reconciliation between the parties if possible, and that cases are very seldom brought into court unless counsel are satisfied that a divorce ought to be granted. I have known of no case in which a divorce has been granted unless upon sufficient proof of some one of the causes named in the statute. Sometimes several causes exist, and that one only is presented and relied on, the record proof of which will throw the least discredit upon either of the parties or upon their children.

Until uniformity of divorce throughout the country can be secured, as suggested by Judge Davis, by an amendment of the constitution of the United States, it is certainly desirable that parties from other States should not come here and establish a fictitious residence for the purpose of getting a divorce. It is also highly desirable to prevent parties

who desire to be separated when no legal cause for divorce exists, from presenting, by collusion, a fictitious case to the court. There are also cases in which a party has endured ill treatment in silence until endurance has ceased to be a virtue, and when the time comes for an appeal to the court, may be without evidence, except such as exists within the knowledge of the injured party. In all these cases I think a very simple change in the law would remedy the evil. Let the court have power, in its discretion, to examine either party under oath. By the exercise of this power, the court would easily detect a case of fictitious residence or of collusion, and would be enabled in a proper case to give relief to a party who had knowledge of violations of the marriage contract which he or she had long concealed from all other parties in the vain hope of reform and better treatment. It has been suggested that the court should in all cases require the production of witnesses in open court, and that not less than two judges should be a quorum of the court for passing final decrees of divorce, but I very much doubt whether this change in the law and its administration is desirable, and until some evidence is produced that divorces are now granted upon insufficient proof, I see no reason for such change. The frequency of divorce is no doubt to be regretted, but the remedy is to be found not in a change of the law, but in such a change in public opinion and in private morality as shall enforce a more careful observance of the obligations of the marriage contract. When the obligations are actually disregarded, when the marriage vow is persistently

broken, it is certainly better that the legal bond should be dissolved.

Many years since I read a book, written, I believe, by a lawyer, but published as the 'Diary of a Physician,' which contained a series of thrilling stories purporting to be derived from the observation of the author. I have often thought that a similar book, being the diary of a lawyer and containing an account of some of the cases in which he had been consulted in relation to the subject of marriage and divorce, might throw light upon the discussion of this subject, but for obvious reasons such a publication would be improper. The confidences reposed in the lawyer in these cases must be held as sacred as those spoken to the priest in the confessional.

XXIII.

WILLIAM R. WATSON AND DEXTER RANDALL AND THEIR POLITICAL CONTEST — COLONEL EDWARD DEXTER AND THE MUMFORD MEADOW LITIGATION.

Matthew Watson was an eminent merchant, who attended to his own business and kept a level head. William R. Watson was an active politician, who kept up a close relation between his own advancement and the public welfare. One day the politician said to the merchant: 'The coming election is very important. I hope you take an interest in it.' The reply was: 'I do not take that view of the matter. It is a mere question whether you or Dexter Randall shall be the clerk of the Court of Common Pleas, and I have no choice.' This rather cynical way of looking at political contests is not wholly obsolete. It is only a day or two since that I heard an old man say: 'It is only a question whether Blaine or Cleveland shall occupy the White House and control the executive patronage. The policy of the government will be the same under one as under the other, and only office-holders and office-seekers have any practical interest in the result of the election.'

At the time when the contest between William R. Watson and Dexter Randall was coming off, it was understood that the clerk of the Court of Common Pleas in the county of Providence held the best political office in the State. It was paid by fees, and

was sometimes estimated as high as two thousand dollars annually. At this time the salary of the chief justice of the Supreme Judicial Court was two hundred and fifty dollars, very moderately increased by certain fees. The official income of the attorney general was estimated at about five hundred dollars. At this time, James Burrill, then at the head of the Rhode Island bar, went from Providence to Chepachet in his own conveyance, paid his tavern bill and tried an important reference case for Judge Ira P. Evans for a fee of five dollars. I have seen the butcher's bills of Governor James Fenner, in which choice roasting pieces of beef were charged at six cents per pound.

When I came to the bar, the strife between Watson and Randall had long been ended, and the office of the clerk of the Court of Common Pleas was held by John W. Smith. He was a model officer. His office hours were from early morning until late in the afternoon, with a very short recess for dinner. He took no summer vacation, and closed his office only one secular day in the year, when he went to Newport at the annual election. He gave patient and courteous attention to the members of the bar. But, aside from the performance of his own duties, he paid no attention to what went on in the court-house. His bills were regularly presented and always accurate, and carefully indicating in red ink the date when interest would begin to run. He held the office for many years, until the exigencies of a political revolution relieved him from its arduous duties. I have not seen him recently, but I think he is enjoying a green old age, and I am sure he retains the good will of all

members of the bar who are old enough to remember him in his office.

I first made the acquaintance of Dexter Randall when we were occupants of adjoining offices in the old *Journal* building, in College street. I went into his office one afternoon in August; there was no carpet on the floor, the sun was streaming in through windows without curtains, and Mr. Randall, in a linen coat, was writing at a plain table, sitting in a chair without arms or cushion. I said: 'Mr. Randall, if you could have your choice, what situation in this world would you occupy?' He leaned back in his chair, and lifting his spectacles to the top of his head looked at me for a moment and said: 'I would have a small house in the country, with just land enough to enable me to keep a cow and supply me with vegetables.' 'But,' I said, 'what would you do then?' He said: 'I would find a good newspaper organ, and I would write the resolutions of '98 into power.'

Mr. Randall belonged to a class of men now nearly, if not quite, extinct. He was an old charter Rhode Island Democrat. Thomas Jefferson was his apostle. The resolutions of '98 were his creed in national politics, and in this State he defended the landed qualification for suffrage, and the party of country farmers against the rising influence of the manufacturers. He looked upon Thomas W. Dorr as a great political Heresiarch, and his followers as a mischievous set of fellows, disturbing without cause the institutions of the State. He wrote a pamphlet entitled 'Democracy Vindicated, and Dorrism Unveiled,'

which excited much attention at the time, and will well repay perusal now.

As a lawyer, Mr. Randall was more remarkable for industry and perseverance than for professional success. On one occasion, when he was addressing the Supreme Court with much earnestness on a question of law, Chief Justice Job Durfee interrupted him. 'Mr. Randall, in view of the facts in this case, of what importance is the law?' 'May it please your honor,' said Mr. Randall, 'if I can establish the law for which I contend, I care nothing about the facts.' On another occasion, when Mr. Randall had been speaking nearly all day before Judge Curtis, and when the candles were about being lighted in the court-room, Mr. Randall said: 'At what time does your honor propose to adjourn?' 'When you get through with your argument,' was the calm, courteous, but firm reply. The adjournment soon took place, and the next morning Judge Curtis read an opinion which, I think, must have been formed before the argument was concluded. Nothing daunted by the adverse result, Mr. Randall took an appeal to the Supreme Court of the United States. He prepared an elaborate written argument in the case, and when he told me that he was going to Washington, I said: 'I thought your case was to be argued in writing?' 'Yes,' he said, 'but I am going on there to make sure that the judges read my argument.' Whether he accomplished this object I do not know, but I believe the decision of Judge Curtis was affirmed.

Mr. Randall, however, had one client for whom he performed unremitting and zealous service, and in

whose cases he was almost uniformly successful. This was Colonel Edward Dexter. He kept up a protracted litigation with the city of Providence for nearly a generation, and gave the Mumford meadow a local celebrity not inferior to that of the field of Runnymede, where the barons contended successfully with King John.

Colonel Dexter had, I think, a life estate in this meadow as tenant by the courtesy. He brought a suit against the city for turning the water upon this land and destroying his crops, and recovered damages. He also brought an action against an aqueduct company for draining water from the land, and so preventing the growth of his crops. There was, of course, no inconsistency between these two actions, and when, as counsel for the city, I undertook to make a little fun by representing Colonel Dexter as bringing suits, first, for turning water upon the land, and then for taking it off, Mr. Randall made an argument of considerable length, in which he pointed out with great clearness the difference between the surface water poured on the land from the street, and the underground springs which furnished nourishment to the crops. And when Mr. Justice Woodbury came to charge the jury, that eminent magistrate, who had about as much power to take a joke as Charles Lamb's typical Scotchman, sustained Mr. Randall's argument in very solemn and impressive terms, and administered a rebuke to me which was well deserved and which I have not forgotten.

After a time, as will sometimes happen, counsel and client fell out, and the result was a lawsuit

between Colonel Dexter and Mr. Randall on an account. Mr. Randall employed me, and an account in offset was pleaded. These accounts covered a period of more than thirty years, and embraced a great many items. Far back into the past was a charge in Colonel Dexter's account of sundry bushels of corn. Upon inquiry by Mr. Randall he explained these items in this way: He said that he was formerly accustomed to play whist with Colonel Dexter, Colonel Simons, editor of the *Republican Herald,* and a fourth hand whose name I have forgotten, and that the stakes were bushels of corn. This case was referred to John P. Knowles as auditor, who reported a large balance in favor of Mr. Randall, which was paid by the executor of Colonel Dexter, and I hope the amount contributed to the comfort of Mr. Randall when the days drew nigh when he could say: 'I have no pleasure in them.'

Mr. Randall belonged to a distinguished Rhode Island family, and in him all the family traits were conspicuous. He had great energy, indomitable will, and adhered to his convictions upon legal and political questions with a firmness which, though it provoked criticism, generally commanded respect.

XXIV.

Joseph A. Scott — The Man and the Lawyer — Physical Indolence and Mental Activity — Christian Hill Litigants — His Fidelity and Accuracy.

It is not alone on the giddy heights, 'too high for safety, too narrow for friendship, and too cool for comfort,' that worthy men are found. In small States, where there is apt to be an over-supply of great men, some of them must dwell in the vales. It has been suggested that Hampdens, Miltons and Cromwells unknown to fame may sleep in country church-yards. There was in England one John Scott, afterwards known as Chancellor and Lord Eldon, famous for his patience, his learning and his doubts. Many books have been published about him. Joseph A. Scott was a member of our bar, but we have no titles of nobility here in Rhode Island. His patience was equal to that of his namesake. His learning was quite sufficient for all his wants, and if he had any doubts, he kept them to himself. This, so far as I know, is the first attempt to give any account of him in print. When I was with General Carpenter, there came into his office one day a man of mature years, large frame and tranquil mien, and said that he desired to become a student at law. This was Joseph A. Scott. General Carpenter, with his usual politeness, entered his name and gave him good advice as to his course of study. He did not frequent the

office much, and I am unable to tell what books he read. In those days no examining committee stood guard over the entrance to our profession. The candidate had only to produce a certificate that he had studied law for a certain length of time, and was of good moral character, and he was at once admitted to practice as attorney and counsellor in all the courts of the State.

Over the early life of Mr. Scott there hangs a veil of obscurity, such as hides the youth of many great men. In some men are united physical indolence with great mental activity. John M. Clayton, the Delaware Senator, was said to be of this type. There is a tradition that Mr. Scott used the great apron in a blacksmith shop as a hammock, and in his early years found there long hours of that sweet repose which only he who feels it knows. It is not probable that he had ever read Dr. Wayland's great sermon on the 'Abuse of the Imagination;' and, like other boys, he may have indulged in day-dreams of the hour when courts and juries would listen spell-bound to his eloquence. I do not think it likely that he ever got so far as to think of running for Congress; but when I consider how broad and easy, since the adoption of the constitution, has been the path that leads to the General Assembly, I think it not impossible that he may have looked forward to a seat in that body.

During the greater part of his long and useful professional life his office was on Christian Hill. How that locality acquired its name I must leave to the Veteran Citizens' Historical Association. I

have known several good men who resided there, and who never, by neglecting their own households, incurred the reproach of being worse than infidels. I think I can see a possible explanation of the selection by Mr. Scott of this famous hill for the location of his office. In the adult Bible class in the Sunday-school of the Central Congregational church, Billings Brastow and William Foster were among the pupils, and my friend and classmate, John Eddy, was a teacher. I was present at a discussion there as to whether it was lawful for Christians to implead each other in the civil courts. Charles Hodges, an active and earnest member of the church, contended that they could not; and when he was reminded that he had a suit pending against a Baptist brother, touching a boundary line between their estates, he replied that the defendant was a backslider and not entitled to the privileges of a Christian. The discussion was prolonged and warm, and was closed by Mr. Eddy in these emphatic words: 'I can tell you that I would rather have the opinion of Sam. Ames upon a question of law than that of all the churches in this city.' Samuel Ames was then chief justice of the Supreme Court of the State.

It may be that the residents on Christian Hill preferred to settle their controversies among themselves, and without resort to the courts; if so, they could have no more useful assistant than Mr. Scott. I am the more inclined to think that this was the case from the fact that the litigations in which he was concerned very rarely reached the civil tribunals. He had a well-balanced mind, a temper not easily

excited or provoked, and he was remarkably gifted with what, upon high authority, is said to be an element of success in our profession — the capacity of sitting still. I am unable to record his professional triumphs, for he did not go about telling of them himself, and quick oblivion is apt to follow the work of a lawyer who does not blow his own trumpet. On those rare occasions when his cases came into court, Mr. Scott, as a rule, acquiesced in the first decision. He did not wrestle with the court after the decision was announced. He filed no bills of exceptions and moved for no rehearing. He seldom, if ever, took an appeal, and he never swore at the court. I do not remember that I ever heard him express any political opinions, and I am quite sure that he never carried a torch in a procession, or shouted himself hoarse at a flag-raising. I think he was a Democrat, and if so, here in Rhode Island he probably felt as the man did who, having the jaundice, and being advised to take exercise, said: 'The stiller I keep, the better I feel.'

Mr. Scott did not fritter away his powers in miscellaneous reading. Contented with his own observations upon men and things, he did not waste his time upon magazines, newspapers or novels. He was not much given to metaphysical speculation, and though, in common with all lawyers, he had profound respect for Chief Justice Job Durfee, I doubt if he ever read 'The Panidea.'

He gave close attention to his own business, and looked carefully to the interests of those who employed him. He did not run about the streets look-

ing up clients, and though moderate in his charges, he did not attempt to get business by underbidding his professional brethren.

John F. Tobey was at one time clerk of the Court of Magistrates, and, of course, under his administration the records of the office were in perfect order. Much of Mr. Scott's business was in that court, and he gave Mr. Tobey some trouble by frequent and prolonged examination of the papers in his office. He had three grades of spectacles with which to examine the sometimes illegible writing of constables and lawyers. I think Mr. Tobey's courtesy never failed him in the presence of any human being, but it sometimes cost him an effort to be polite; and sometimes, after he had been detained for some hours by Mr. Scott, he would find relief in a graphic description of the way in which the different spectacles had been called into requisition in the vain attempt to decipher some obscure document.

The moral character of Mr. Scott was above suspicion, and though several men of less merit have been talked of in connection with that office, he was never nominated for the Presidency of the United States, and, therefore, no scavengers gave offense to decent people by retailing dirty stories about him. One morning he was missed on Christian Hill, and I will no further seek his merits to disclose. He sleeps with the lawyers who went before him and have followed him to their final rest.

The young lawyers who crowd the court-house

when the docket is called, each one of them full of his own hopes and fears and ambitions, know as little of Joseph A. Scott as they do of Asher Robbins.

XXV.

FRANCIS E. HOPPIN — YOUTH AND COLLEGE LIFE — EARLY SUCCESS AT THE BAR — CHARACTER AND ATTAINMENTS — OFFICIAL POSITIONS — RETIREMENT FROM ACTIVE LIFE.

In these days, when the thoughts of the whole community are occupied with the character and career of the distinguished citizen* who, full of years and of honor, has gone to his rest and his reward, I have been thinking of some of the men by whom he was surrounded in his earlier days, who shared his friendship and esteem, and have preceded him to the undiscovered country. Of one of them I wish to say a few words, however inadequate, in this paper.

Francis E. Hoppin was first a man, then a gentleman, and then a lawyer. He had a sound mind in a sound body. He was at once gentle and strong, and he was adequately equipped by a thorough general education and by careful study for the profession of his choice. He was born in the purple. By this I mean, that the conditions of his childhood and youth were most favorable. All persons of mature age will know what I mean, and the new generation can ascertain by a perusal of 'Auton House.'

He was a sophomore in Brown University when I entered that college. He lived at home, and after nearly fifty years I can see him as he came up College

* Hon. Henry B. Anthony died September 2, 1884.

street to his recitations, of a bright September morning, the handsomest boy in college with, possibly, the exception of my classmate, James Burrill Curtis. We were members together of the United Brothers Society in its better days, when its debates would have done credit to any deliberative body, and when we used to discuss the question whether George Van Ness Lothrop, our special pride, or Charles S. Bradley, the leader of the Philomenians, was the ablest debater and the most eloquent orator. We were also members of the Alpha Delta Phi, the first of the secret societies established in the University. I had thus ample opportunity to know Mr. Hoppin, and a better and more lovable man I have never known.

He graduated with the highest honors of his class in 1839, and in 1843, at the age of twenty-four years, entered upon the practice of the law in this city, and was very soon engaged in a large and lucrative business. He had every advantage. His father was well known and much esteemed among business men. Henry B. Anthony was his brother-in-law, and James G. Anthony, whose support at that time was a tower of strength, took a deep interest in the professional success of Mr. Hoppin. But though his success was remarkable, it was not greater than his desert.

It needs but a slight acquaintance with English literature to see that for many generations, lawyers, like the early Christians, have been evil spoken of; and now-a-days it is common to have it said that what was once a noble profession has in these times degenerated into a dirty trade. The explanation of this apparent inconsistency is not far to seek, and may

be found in a remark once made to me by my friend, James T. Brady, of the New York bar: 'There are lawyers and lawyers,' he said. 'We have in the city of New York some lawyers of perfect integrity and honor, and we also have some for whom, if there had been none in the original plan of creation, a hell must have been especially provided.'

Mr. Hoppin was a lawyer whose integrity and honor were unquestioned. He would not misquote an authority, or misstate the contents of a paper, or misrepresent the testimony of a witness. He served his clients with fidelity, and treated his opponents with courtesy and fairness. He never resorted to any of the arts by which even great advocates have sometimes successfully misled the courts and juries. I never knew a man who more instinctively obeyed the injunction:

> 'Where you feel your honor grip,
> Let that aye be your border.
> Its slightest touches, instant, pause;
> Debar a' side pretenses
> And resolutely keep its laws,
> Uncaring consequences.'

Anything like a trick stirred his generous wrath. On one occasion, when an unsuccessful attempt was made to take advantage of him in court, his indignation found expression in strong terms. I said to him: 'Never mind, it has done you no harm.' 'But,' said he, 'I don't like to know that there are such men about. I don't like to feel that at every step I am liable to tread on a cockroach.'

On another occasion, when he was moving for a

continuance upon an affidavit, he was reminded by the court that he had alluded to a fact which was not stated in the affidavit. He at once made an apology in a tone which indicated real regret, so sensitive was he to the slightest departure from professional propriety.

It has seemed to me sometimes that judges find it easy to check a gentleman who has inadvertently stepped out of the record, while they avoid a struggle with a persistent pettifogger who breaks bounds and runs about until he tires himself out. If Solomon had been a lawyer, he would have added this to the list of sore evils which he had seen under the sun, and it would have increased his vexation of spirit.

Mr. Hoppin was for some years presiding justice in the Court of Magistrates. Questions in that court were argued before him by men who were afterwards leaders of the bar, and their testimony was uniform to his impartiality, his urbanity and his legal acumen. In the administration of the criminal law, he was at once firm and humane. The unfortunate men and women who were arraigned in his court felt at once that while as a judge he did his duty, as a man he was tolerant and kind.

When advancing years made it proper that the venerable Thomas Burgess should retire from that office, Mr. Hoppin was unanimously elected by the city council, judge of the Municipal Court of the city of Providence, and he discharged the duties of that position to the entire satisfaction of the community. Honors seemed to come to him without effort, and to be worn without envy; and there was no position to

which he might not reasonably have aspired. His health suddenly failed, and for many years he lived to illustrate the truth :

'They also serve, who only stand and wait.'

Into that time of silence and darkness, the grandest and most beautiful period of his life, I will not intrude.

After he had been withdrawn from active life for ten years, his death was announced and created a profound sensation. The notices in the press and the proceedings of the bar gave abundant evidence that Mr. Hoppin was at once respected and beloved. Of the men who took part in the proceedings of the bar, William W. Hoppin, Edwin Metcalf and Abraham Payne alone survive. Richard Ward Greene, Samuel Currey, John F. Tobey and Wingate Hayes spoke in terms of warm eulogy of their brother and friend, Francis E. Hoppin, and have long since joined him.

Mr. Hoppin was no recluse nor ascetic, and yet I do not remember that he mingled much with young men on convivial occasions, or was often seen at social entertainments. I think he found his recreation with his books and his family. I think he would have said, as did another distinguished lawyer, when asked to accept a high position which would have taken him away from his family : 'All my habits are retired and domestic, and all my sources of happiness are at home.' But he touched life at all points, and missed no opportunity of rational enjoyment.

In writing these papers, at the close of each one I have felt that I came far short of doing justice to the

subject, but in no case has the feeling been so distinct as it is now when I take leave of Mr. Hoppin.

'Green be the turf above thee,
Friend of my better days;
None knew thee, but to love thee,
None named thee, but to praise.'

XXVI.

EDWIN C. LARNED — BY BIRTH, EDUCATION AND TRAINING A RHODE ISLAND MAN — COLLEGE LIFE — POLITICAL EXPERIENCE — REMOVAL TO CHICAGO — EMINENCE THERE.

Edwin C. Larned paid the debt which every man owes to his profession, made his fortune and established his reputation in another State and in a distant city, but he was a native of Rhode Island. He had his education and his early professional training here, and he intended to spend the closing years of his life amidst the scenes of his youth and surrounded by the social influences of New England, which were always most attractive to him, and he is entitled to a place among the members of the Rhode Island bar. He was born in the city of Providence on the fourteenth day of July, 1820. In 1840 he graduated at Brown University with high standing in his class. He was admitted to the bar here, and after several years of successful practice removed to Chicago in 1847, and after a distinguished career as lawyer and citizen, died there on the eighteenth day of September, 1884.

Mr. Larned was early thrown upon his own resources, and this is commonly supposed to be a great advantage to a young man. Mr. Emerson is reported to have expressed his regret that his sons could not have the benefit of the poverty which he enjoyed as a boy. But I think this is an open question. Soon after I was admitted to the bar I had a conversation with a friend upon this subject, who contended

stoutly that a young man who started in the world with nothing had the advantage of one who had something to start with. I disputed this point with him, and the discussion grew quite warm until we came to definitions, when I found that we differed about the meaning of 'something' and 'nothing.' He meant by 'nothing,' he said, about ten thousand dollars. This I thought would amount to a very respectable 'something.' But however this may be, Mr. Larned never doubted that he could make his own way in the world. He had courage and self-reliance.

At the time when he was in college there were no boat nor base ball clubs. Secret societies made their entrance at that time, but it was some years before they got full possession. We had open debates, in which we discussed all the important questions of the day, and we got our exercise by long walks in the country. In this way we came to know each other very well.

It was about this time that Carlyle, Emerson and Brownson became the fashion, and their writings were much discussed. Some of us became very radical in our opinions, and were confident that a new day was dawning upon the world. Mr. Larned read these writers, and I had many discussions with him about them, and became well acquainted with the character of his mind. He had what has been happily called in Mr. Gladstone, the 'conscience of the intellect.' He did not agree with these radical writers. But he took pains to understand them, and when he differed from them he was able to give a

reason for the faith that was in him. He was not a timid conservative, but after careful investigation he found his natural home in the Whig party and the Episcopal church.

After his admission to the bar he practiced law here for several years as the partner of Richard Ward Greene. Mr. Greene was then the leading commercial lawyer in the State, and Mr. Larned had the advantage in his office of thorough professional training.

Before his removal to Chicago he made one political venture. He became a candidate for a clerkship in the General Assembly. He had the real support of his friend, General Albert C. Greene, and I think he had the apparent support of some who were in truth working against him. He thought he had every prospect of success, but he was defeated. I think this taught him a lesson which was very useful to him, and which contributed very much to the comfort of his future life. He was ignorant or careless of the arts which lead to political success. There is a strong analogy between political life and the use of tobacco. Some men try to smoke, and failing of success get on very well without tobacco. Some men are soothed and strengthened by the poison which they inhale, and smoke from youth to age in peace and happiness; others smoke and suffer all sorts of discomfort from a habit which they cannot abandon. In politics, some men try to run with the machine, and having suffered some slight injury, retire from the contest; others find their place, become part of the machine itself, and either as cog

or driving wheel, or as motive power, have a good time to the end; others can neither fit into the machine nor let it alone, and get all the comfort they have in grumbling at their want of success.

During his life, Mr. Larned, without seeking office, was content to use his influence by letting his opinions be known upon all subjects which concerned the welfare of the community in which he lived. It was a high tribute, however, to his merit, and one of which he was justly proud, that President Lincoln conferred upon him, without his solicitation, the important office of United States district attorney in the State of Illinois.

Not long since, there was published in the Chicago *Tribune* a letter from Mr. Larned upon the Presidential campaign, in which he urged with characteristic earnestness and force of reasoning the claims of the Republican party. This letter had the ring of a summons to the Whig party in the old time by Henry Clay, when one blast upon his bugle horn was worth a thousand men. It was an appeal to the reason and conscience of the country, in pleasing and striking contrast to much of the political discussion of the day, from which it would seem that both parties look for success or defeat, as they may gain or fail to gain, the votes of the unintelligent classes of the community.

A just and discriminating estimate of Mr. Larned has appeared in the columns of the *Journal*, from the pen of his friend, Bishop Clark. I cannot expect to add anything to this tribute to the memory of a good man, but I have been unwilling to resist the impulse

to say a word about my classmate and friend. He called upon me a few months since, and I had a cheerful conversation with him. He evidently felt that his active work was over, and was looking forward to a period of rest. Sooner than he expected, he has doubtless found it, on the other side of the Great River. As we shook hands at parting, we both anticipated, I think, many pleasant interviews, but for these we shall have to wait, but perhaps not very long.

XXVII.

THE INDIA-RUBBER LITIGATION — WHAT IT WAS ABOUT — DR. HARTSHORN AND THE COUNSEL IN THE CASE — HOW THE EXTENSION OF THE HAYWARD PATENT WAS DEFEATED — THE GOODYEAR LITIGATION AND THE COUNSEL CONCERNED — JAMES A. GARFIELD.

I will not venture upon the great ocean of india-rubber litigation, but I will try to pick up some shells and pebbles on its shore.

More than thirty years ago, the talk of the town, one morning, was that Horace H. Day, through his attorney, Thomas A. Jenckes, had commenced an action against Isaac Hartshorn. Dr. Hartshorn was then conducting a successful business as manufacturer of india-rubber boots and shoes. He was one of the Shoe Associates, so called, who held a monopoly of that manufacture, secured by three patents — the Chaffee machine patent, by which the rubber was ground; the Hayward patent, by which it was mixed with lead and sulphur, and the Goodyear patent, by which the compound was subjected to a high degree of heat, and became, in the happy phrase of Mr. Webster, an elastic metal. For several reasons, Dr. Hartshorn was not popular with his associates. They had been forced to admit him into their number to avoid a contest with their monopoly, and after he was admitted he made the neatest and cheapest shoe in the trade, and commanded the market.

Horace H. Day, sometimes called the 'Napoleon

of India-Rubber,' but more properly described as its 'guerrilla chief,' had procured from Mr. Chaffee an assignment of his patent, and had commenced this action against Dr. Hartshorn. Mr. Jenckes was then at the height of his professional reputation, and it was understood that he had found a flaw in the title by which the Shoe Associates had held the Chaffee patent. I shall not undertake to state the questions of law and of fact involved in this case. They may be found in full in the records of the Circuit Court, and enough of them to satisfy any reasonable curiosity may be found in the nineteenth volume of Howard's Reports of the Supreme Court of the United States. By the terms of their association the Shoe Associates were bound to defend this case; and by the advice of their counsel in New York, interposed certain special pleas, to which demurrers were filed. These were argued by Charles O'Conor, of New York, and by Mr. Jenckes, and the decision was in favor of the plaintiff. This decision confirmed a somewhat general impression that the opinion which had been given by Mr. Jenckes was correct, and that Mr. Day would succeed in breaking up the india-rubber monopoly.

The case came on for trial upon its merits in the Circuit Court, the venerable John Pitman, district judge, presiding. With Mr. Jenckes was associated Nathaniel Richardson, whose great ability, it was understood, had been discovered and utilized by Mr. Day. He was for many years prominent in the litigations about india-rubber in courts and before the committees of Congress; sometimes representing one

party, and sometimes another, and always exhibiting industry and much subtlety in the discovery of technical points, which were generally overruled by the judges; and much success in addressing juries and obtaining verdicts, which courts of last resort frequently failed to confirm. The defendant was represented by Joseph S. Pitman. It was a New York notion that a party gained some advantage by securing the services of a near relative of the judge. But these people did not understand the Pitman blood. The only possible effect upon the mind of Judge Pitman would be to make him extremely careful not to give any undue advantage to the party represented by his son, and the india-rubber monopoly had not money enough to induce Joseph S. Pitman to attempt to use his personal influence with his father. The other counsel for the defendant were Abraham Payne, Charles S. Bradley, and James T. Brady, of New York. Samuel Ames, who was counsel for the defendant, was absent at the time of the trial, being engaged in the Supreme Court of the United States.

The trial lasted six weeks, and some of its scenes and incidents were highly dramatic. It was in the old court-room in the Mallett building, on South Main street. The venerable judge, with his whitened locks, seemed the very impersonation of judicial dignity, impartiality and decorum. At one table the central figure was Mr. Jenckes with his large notebooks, habitually silent, his grave face occasionally lighted by a smile, from which his party derived much encouragement, whether they understood it or not. Mr. Richardson took a few notes, and had that easy,

confident air which a great jury lawyer knows how to assume in anticipation of the final agreement of the twelve intelligent and honest men to whom he is finally to make an appeal for a verdict in his favor. Around these two lights of the law circulated the conspicuous form of Horace H. Day with his satellites. At the other table, James T. Brady, from New York, with several young men, his assistants, was the centre of attraction, and behind his counsel sat Dr. Hartshorn watching the progress of the case with a keen and powerful intellect, his feelings deeply moved by the momentous consequences involved in the result of the trial. The court-room was crowded during the trial, and although the wit and humor of Mr. Brady occasionally turned the laugh against him, Mr. Day and his party had evidently the sympathy of the audience.

After the adjournment of the court, the counsel for the defendant had daily consultations in the office of Mr. Bradley. Mr. Brady was a mild and genial autocrat, but still an autocrat, and he issued an edict that the clients should not be present at these consultations. This was a New York custom and new in Rhode Island practice, and in this case not very wise, for Dr. Hartshorn understood his case as well as any of his counsel. Towards the close of the case, one of the jurors was taken sick and very soon died. We had a consultation as to whether we would consent to go on with the trial and take a verdict from eleven jurors, and it was decided not to give such consent. But at the opening of the court, Mr. Brady announced that the trial must go on, having, I presume, con-

vinced himself that it was better to risk an adverse verdict than to incur the expense of a new trial. By an arrangement with the court, the closing arguments on the different branches of the ase were made by Mr. Jenckes and Mr. Richardson for the plaintiff, and by Mr. Bradley and Mr. Brady for the defendant. They were very long, and it is needless to say that they were learned and eloquent. The charge of the judge was clear, full and impartial, but its general tenor was thought to be in favor of the defendant. The jury rendered a verdict for the plaintiff, which was received with applause by the audience.

The case went on writ of error to the Supreme Court, and any lawyer will take pleasure in reading the opinion, in which Mr. Justice Nelson cleared away all irrelevant matters, and in a few terse and vigorous sentences gave his reasons why the judgment below should be reversed, and ordered a new trial. And this was the end of the case.

In future papers I shall have something to say of Mr. Brady. My acquaintance with him commenced at this trial, and our friendship continued through his life. He was a successful lawyer, a perfect gentleman, and upon the whole, I think, the most delightful companion I have ever known.

I have alluded to the opinion of Mr. Justice Nelson in this case, and I will close this paper by a remark made by Mr. Justice Curtis after he left the bench of thr Supreme Court: 'I think Judge Nelson had the most absolutely impartial and perfectly judicial intellect of any man I have ever known. He had had a long training, and he weighed evidence and argument in balances at once delicate and accurate.'

On the same day the parties dined at the City Hotel. At one end of the long dining-room, Mr. Brady was surrounded by his friends, in that quiet mood which befits a defeated party. Mr. Day and his friends, at the other end of the room, were a little noisy, as was natural. During the dinner he arose, and, calling the attention of Mr. Brady, proposed the health of that upright judge, the Honorable John Pitman. Mr. Brady cordially responded, expressing the hope that the time would come when Rhode Island juries would pay some attention to the charges of so admirable a judge. As the dinner went on, the party of Mr. Day grew a little insolent over their victory. Of this, Mr. Brady took no notice, but said to me in his quiet way: 'In New York, when we have gained a verdict, we think we are at the beginning of our trouble. Before us rise motions for a new trial, exceptions and appeals, and we feel like the traveller at the source of the Nile, when he contemplated the dangers and difficulties of his return.' And he quoted the stanza from the little poem of Mrs. Hemans:

> 'But darkly mingling with the thought
> Of each familiar scene
> Rose up a fearful vision, fraught
> With all that lay between,—
> The Arab's lance, the desert's gloom,
> The whirling sands, the red simoon.'

I spent the winter of 1856-7 in Washington, acting as counsel for Dr. Isaac Hartshorn and Messrs. Bourn, Brown and Chaffee in opposition to a Congressional extension of the patent for the manufacture of india-rubber, known as the Hayward or

sulphur patent. Washington was a pleasant place to live in at that time. The slavery question, which had been settled by the Missouri Compromise in 1821 and again finally settled by the compromise measures of 1850, and settled once more by the repeal of the Missouri Compromise under the leadership of Stephen A. Douglas in 1854, had at last been put permanently at rest, in 1856, by the triumphant election of the venerable and conservative statesman, James Buchanan, over the radical John C. Fremont. The southern members of Congress were in high spirits, and the parlors at Willard's Hotel were crowded with southern ladies, affable, exultant and cordial. No counsel ever had better clients than mine at this time. Dr. Hartshorn, whose temper had not sweetened by his recent controversy with Horace H. Day, brought his powerful intellect to the attack on the india-rubber monopoly. Mr. Bourn was himself an excellent lawyer, and what he did not know about the tricks of the india-rubber kings was not worth knowing. And Colonel and Mrs. Brown were so popular at the National Hotel that everybody wanted them to win their cause.

I have appeared as counsel before a variety of tribunals, beginning with Judge Richardson, of Johnston. I have tried causes in the Court of Magistrates in this city and in the other courts of this State, and in the Supreme Court of the United States. I have appeared before referees and masters in chancery, and I tried one cause before an ecclesiastical council, and I consider myself an expert as to the manner in which counsel should demean them-

selves before the tribunal, and especially as to the manner in which the tribunal should treat counsel, and I intend at the proper time to write a paper upon that subject. Perhaps no tribunal can make things so easy and pleasant for counsel as a Congressional committee. They do not have the responsibility of final decision. As a rule, I think they do not intend to pay much attention to the arguments of lawyers; and this, experienced counsel very well understand. The result is that the committee listen with courtesy and patience, and the counsel speak with the consciousness that the hearing before the committee is a mere form, and that the real contest is to come off in the lobby.

During this winter I had three duties to perform as counsel; the first was to make oral arguments before the committee. This was very pleasant. James T. Brady was my opponent. We walked arm-in-arm together to the committee room, and said our pieces there as boys declaim at school exhibitions, and then we returned together to lunch at Willard's Hotel. My second duty was to prepare printed arguments to be distributed among the members of Congress. In the preparation of these I had the valuable assistance of my clients. When prepared, they were duly mailed in the evening and placed upon the desks of the members the following morning. After sending in one of these documents it was my custom to take my seat in the gallery to see what became of them. As the members came in, one after another, they almost invariably threw my arguments with other similar matter into the waste paper

basket, and occupied the time before morning prayer in reading the New York *Herald*. My third duty was to call upon individual members of Congress and explain my cause to them. The strength of the opposition to the extension of the patent was among the southern members. The party seeking the extension was really the 'great india-rubber monopoly,' which had in its service a well organized and powerful lobby. Their headquarters were at Willard's Hotel, where they had ample parlors, open day and night, and well supplied with refreshments. The chief manager of this lobby was an astute and most agreeable gentleman, who understood his business.

I should mention that Horace H. Day opposed the extension of this patent, but he fought on his own hook, and without any concert with me or my clients. He was at this time an earnest spiritualist, and conducted his case under instructions received through mediums.

During the winter, in the course of my consultations, I made some very pleasant acquaintances; among them, Howell Cobb, George W. Jones, of Tennessee, and Governor Letcher, of Virginia. All the members of Congress whom I met treated me with much courtesy, but I don't think they were much interested in what I had to say. They had made up their minds to vote against the extension of the patent, but their thoughts were occupied much more intently with the formation of the Cabinet of the incoming President than they were with Nathaniel Hayward's merits in the discovery of the proper proportions of mixing sulphur, lead and india-rubber.

Thus the winter wore away, when, one evening in February, one of the friends of the extension said to me: 'We are going to pass our patent to-morrow;' and then explained to me that the chairman of the committee would report in its favor and demand an immediate vote, and that they had counted their friends and knew the exact majority by which the bill would pass. I had no doubt of the accuracy of his information. He was kind enough to compliment me upon the manner in which I had performed my duty as counsel; and I went to bed and slept soundly notwithstanding my defeat.

The next morning I went to the capitol without the slightest intention of making any attempt to prevent the action of which I had been informed. I expected to take my seat in the gallery, and after listening to the proceedings to report to my clients by telegraph that they had lost their case. During the winter I had frequently seen the friends of the extension on the floor of the House, but I had never been there myself. This morning, Honorable Nathaniel B. Durfee, a member of Congress from this State, met me, and said: 'Would you not like to go on the floor for a little while? If you would, you may take my seat.' I accepted his offer and found that his seat was near that of Mr. Florence, of Pennsylvania. He was one of the members whom I had consulted, and I said to him: 'They are going to pass that patent this morning,' and told him what I had heard the previous evening. He immediately spoke to George W. Jones, of Tennessee. 'I will block that game,' said Mr. Jones. 'How can you do that?'

asked Mr. Florence. 'I will move to go into committee of the whole on the tariff,' said Mr. Jones, 'and the Yankees will jump at that any time.' At the proper time the chairman of the committee made his report, and instantly Mr. Jones made his motion to go into committee of the whole, and it prevailed. The chairman of the committee then asked leave to withdraw his report. 'I object,' said Mr. Jones. After a few minutes I went to the seat of Mr. Jones, and said: 'Where is that report now?' He replied: 'It is on the Speaker's table, and it will stay there during the remainder of this session.' This was not his exact expression, but it is more decorous, and means the same thing. And as a prediction it proved to be entirely correct. Just at this moment, a deputy sergeant-at-arms touched me on the shoulder and told me that I had no business on the floor of the House. I certainly felt that I had no further business there, and retired at once. Several attempts were made by the lobby to have the report taken from the Speaker's table; and I remained to the end of the session to watch the case, and on the fourth of March I had the pleasure of sending a telegram to my clients announcing their victory. And thus ended that part of the india-rubber monopoly which was sustained by the Hayward patent.

I then stood in the crowd by the side of the late Amos D. Smith, and heard President Buchanan deliver his inaugural address, at the close of which he announced that a decision of the Supreme Court might be expected which would settle once more the great slavery question. The 'Dred Scott' decision

soon followed, and its effect in quieting agitation upon the subject of slavery is well known.

The Chaffee patent had expired; Congress had refused to extend the Hayward patent, and the continuance of the india-rubber monopoly depended upon an extension of Goodyear's patent for the vulcanizing process, so called. An application for this extension was made to the Commissioner of Patents, and a formidable opposition at once appeared, but one by one the opponents withdrew, and Horace H. Day was left alone upon the record in opposition to the extension. A secret arrangement was then made with Mr. Day by which he was to have certain licenses under the extension if it should be granted. The further conduct of the case for the extension was intrusted to the counsel of Mr. Day, and was managed by them with skill, ability and success. The commissioner had every reason to suppose that Mr. Day was making all the opposition he could to the extension, when, in fact, his counsel prepared and presented all the evidence in favor of the extension, though it appeared to the commissioner to come from the counsel of Mr. Goodyear.

Under these circumstances it is not strange that a good *prima facie* case for the extension should have been made, and the commissioner extended it in an opinion remarkable for its eloquence rather than its judicial temper. He was evidently under the impression that he was protecting a poor inventor against pirates, when, in fact, he was protecting a monopoly at whose hands the public had already suffered as much as in justice and equity they ought to have done.

Soon after the beginning of the civil war, the Providence Rubber Company, whose principal stockholders were Messrs. Bourn, Brown and Chaffee, began to manufacture india-rubber blankets for the army. A bill in equity for an injunction was filed against them in the Circuit Court in this district in behalf of Goodyear and certain india-rubber companies which really owned and controlled the patent of Goodyear. This case had a long and vigorous life, resulting in a decision of the Supreme Court of the United States disastrous to the respondents, perhaps profitable to the complainants, and certainly satisfactory to the numerous counsel engaged in the cause. It was a fat contention, and I think they all had flowing fees.

Judge Clifford promptly granted a preliminary injunction unless the defendants should give bond to account for profits. This bond was given and the case proceeded. The record will show that the case was closely contested, and upon numerous grounds. Perhaps not much weight ought to be attached to the criticism of counsel upon a decision adverse to him and his clients, and I am not prepared to say that the decision in this case, upon strictly technical and legal grounds, was wrong. But I have always felt that it was substantially unjust, and I am certain that the leaning of the learned judge who presided in this circuit was, from the start, decidedly towards the side of the complainants. Judge Clifford was always disposed to uphold the government, or any grant which the government had made. I remember once to have heard him sentence a poor criminal at

the bar. He told the poor fellow that he lived under a beneficent government which had provided him with a grand jury to present an indictment against him; with a petit jury who had rendered a prompt verdict of guilty; with a safe prison in which his comfort had been cared for; with transportation to and from the court-house in charge of vigilant officers, and that he had now come to receive his sentence from a court which had no discretion, but must pass the sentence provided by law.

After many hearings in the case, Goodyear *vs.* The Providence Rubber Company, in which the counsel for the defendants had every reason to be satisfied with the patience and courtesy with which they were listened to by the court, a decree was entered making the preliminary injunction permanent, and sending the case to a very competent master, who gave the parties careful attention and made his report, to which exceptions were taken and duly heard, and a final decree was rendered in the Circuit Court for about three hundred thousand dollars; and an appeal was taken to the Supreme Court of the United States, where, after full argument, the decree of the Circuit Court was affirmed. I have noticed this case not for the purpose of discussing its merits, but because I wish to say something of some of the counsel who from time to time were engaged in it.

The complainants were represented by Wingate Hayes and Charles S. Bradley, of this city, and from time to time by J. Hervey Akerman, David Dudley Field, Edwin W. Stoughton, William M. Evarts, of New York, and Benjamin R. Curtis, of Boston. The

respondents were represented by James H. Parsons and Abraham Payne, of this city, Caleb Cushing, of Massachusetts, and Jeremiah S. Black, of Pennsylvania. James A. Garfield had some professional association with Judge Black, and was present at several consultations of this case. When a final argument came on at Washington, the record was a very large one, and the court not only granted a liberal extension of time, but allowed three counsel to speak on each side. An elaborate opening was made by Mr. Payne, who was followed by Mr. Cushing, and the closing argument was made by Judge Black. On the other side, Mr. Stoughton was heard, followed by Mr. Akerman, and the closing argument was made by Mr. Evarts. During the progress of the case it seems that the complainants wanted to ascertain what would be the charges of Judge Curtis for future services in the case. At their suggestion, their solicitor, Mr. Akerman, addressed to him a note upon this subject, to which he replied that he should charge such sums as taking into consideration the labor and responsibility involved, and the result of the litigation, should seem to him to be reasonable. From this point Judge Curtis disappeared from the case, and it was conducted afterwards under the direction of Messrs. Stoughton and Evarts. Of the counsel engaged in the case, Messrs. Akerman, Bradley, Field, Evarts and Payne survive, and I shall have nothing to say of them. Parsons I have already noticed in these papers. Of Mr. Garfield I have little to say. I met him only once at a consultation with Judge Black, in Philadelphia. At the

time appointed for the consultation, Mr. Garfield was not present, and I suggested that it was hardly worth while to wait for him. But Judge Black said: 'Certainly we will wait for Mr. Garfield. I want his opinion upon all the points in this case. I can tell you that James A. Garfield has an unerring judgment;' and when, long afterwards, Mr. Garfield was a candidate for President of the United States, and the political party press was filled with imputations upon his integrity, Judge Black, though a strong partisan always, and a political opponent of Mr. Garfield, took special pains to make publicly known his confidence in the incorruptible character of his old associate and friend.

XXVIII.

JAMES T. BRADY — NEW YORK AND THE SOUTH COUNTY — MR. BRADY AS A LAWYER — HIS SOCIAL AND ORATORICAL QUALITIES.

That no man is a hero to his valet has been accepted as a correct maxim, though Mr. Carlyle tells us this is quite as often the fault of the valet as the hero. The truth seems to be, that while many men of great reputation dwindle a little as they come near to us, there are some who can bear the closest examination and prove to be superior to their own reputation. We have all heard that no man could meet Edmund Burke under a shed in a shower without finding out at once that he was in the presence of a remarkable man. Governor Arthur Fenner, on one of his hunting excursions, spent a night at the village tavern in Canterbury, Connecticut, and some forty years afterwards, when a boy, I heard old men in the tavern recounting the incidents of his visit and repeating anecdotes about Governor Fenner.

James T. Brady was a man when once seen was not easily forgotten. He first came to this State to defend some gentlemen who had robbed the bank in Westerly in the old-fashioned way of breaking open the safe, instead of the more modern mode of first getting appointed cashier or president of the institution. On the first acquaintance of Mr. Brady with the people of the south county, I think there was some surprise on both sides. Boston people have

been laughed at for treating their city as the 'hub of the universe;' but, in my opinion, there is no conceit equal to that of the ordinary New Yorker. His state of mind is typified by the remark of Mike Walsh, that it requires more intelligence to keep out of the way of an omnibus in the city of New York, than to be a justice of the peace in the country. The chances are that he thinks of Rhode Island as a distant region of the earth where there are extensive beaches and summer hotels, and where it is sometimes difficult to collect debts by legal process.

Mr. Brady found himself among such lawyers as Wilkins Updike, Nathan F. Dixon, Joseph M. Blake and Sylvester G. Shearman; in the society of ladies quite as attractive as any he had been accustomed to meet in Fifth avenue or Madison square, and among country gentlemen and farmers who, in manners and in general intelligence, would not suffer in comparison with a Wall street broker, a Tammany brave, or a New York alderman. On the other hand, the cultivated ladies and gentlemen of the south county, instead of the ordinary criminal lawyer, of whom they had seen some specimens both of native and foreign production, found themselves in the presence of a gentleman of culture and refinement. And the result was mutual attachment and respect. To the day of his death, Mr. Brady loved to talk of the friends he made in Washington county, and to this day the people there remember with pleasure the visit of Mr. Brady.

I first made the acquaintance of Mr. Brady when years afterwards he came to this city to take part in the india-rubber litigation. He had then passed the

middle period of life, and years had brought the philosophic mind. He had then recently returned from foreign travel, and the first impression made upon me was that of a man in whom all things took a 'sober coloring from an eye that had kept watch o'er man's mortality.' He seemed to have a perfectly just estimate of all men and of all things derived from his own experience, and from a wide and wise survey of human institutions and of human opinions upon all subjects, social, political and religious. A Roman Catholic by birth, education and conviction, he had charity for all creeds. A Democrat of the old school of Jackson, with strong convictions, in harmony with the views of southern statesmen, he was yet able to do justice to Garrison and Sumner. With a perfect appreciation of the real value of wealth, official power and social position, he did not over-estimate any of these things.

As a lawyer he seemed to me to have clear perceptions, quick insight into the points upon which a case ought to turn, and infinite tact in the use of the means which his case afforded for the purpose of reaching the verdict or judgment which he desired to obtain. So far as I observed, he made no mistakes in the management of a cause. In addressing the court or the jury, his manner was dignified and persuasive. His voice was musical and carefully modulated, and his language well chosen and accurate. His wit was keen and his humor genial, and they helped each other. There was no malicious sting in his wit, and his humor never degenerated into buffoonery.

But I do not think of Mr. Brady as a lawyer, eminent as he was in that profession. It was as a companion that I valued his society and cherish his memory. He did not wear his heart upon his sleeve, and seldom talked of himself. He had an inexhaustible fund of anecdote about the lawyers, judges and literary men whom he had known in his native State and city of New York. I could fill a volume with these anecdotes, told in a manner which would fairly rival those eminent story-tellers, Walter Scott and George IV. Like the late Senator Anthony, Mr. Brady took men for what they were worth, and found friends among all classes of people; but I think he enjoyed most the society of young men, in whom he found the qualities of mind, and especially of heart, which pleased him. Once when I was in New York, he invited me to meet some of his friends at a dinner at Delmonico's, in Chambers street. The guests were all young men, and I do not remember the name of any one of them. Mr. Brady was a boy with the rest; but while they were perfectly at their ease, I noticed the respect and deference with which they treated their host. Nothing was more remarkable about him than the union of a most gracious courtesy with great dignity and reserve. I think no friend of his, however intimate, would have ventured upon any rude familiarity of speech or gesture. I should like very much to know if any of the men who made the hours of this dinner pass so pleasantly, remember the occasion and the elderly lawyer whom they helped to entertain.

As a public speaker, Mr. Brady was a perfect artist. Indeed, he once maintained in discussion with me the

utenable thesis that an advocate should have no interest whatever in his case, and that only upon this condition could he make his argument a perfect work of art. There is this amount of truth in his position, that to make a good argument in a bad case, a man must have a level head. I was sitting by the side of Mr. Brady in a court-room in New York, when a lawyer was arguing with tremendous energy a motion for a new trial. 'That man,' said he, 'has a strong desire for a new trial, without the faintest notion of any reason why he should have it.' But no man knew better than Mr. Brady that real eloquence demands the man, the subject and the occasion.

In the autumn of 1856, when Mr. Buchanan was running for the Presidency, Edward N. Dickerson and James T. Brady happened to be in this city on professional business. The Democrats called a public meeting, and upon a very short notice Railroad Hall was packed to hear the distinguished gentlemen from New York. Mr. Dickerson made a few remarks and handed the audience over to Mr. Brady, and I have never witnessed a more perfect oratorical success. From the start he had the great crowd under perfect control, and for an hour and a half he called forth at will bursts of laughter or shouts of applause or held the audience in silent attention to careful and logical argument.

Without making any pretense of learning, Mr. Brady knew all the best literature in the English and in the French language. As was once said of James Burrill, he was familiar with all the summer reading. He had the true poetical temperament.

After an evening passed at the supper table, where his wit and humor were the delight of the company, he loved to take the arm of a friend and walk about the streets of the city under the stars before retiring to his room. And he once told me that he seldom went to sleep without reading for half an hour the poetry of Whittier. I have thus given this friend a place among my reminiscences of the Rhode Island bar, without any attempt to fix his rank among the legal athletes with whom he successfully contended in the metropolis of the country, where his fame is well established.

XXIX.

CALEB CUSHING — HIS CASES IN COURTS OF THIS STATE — ARGUMENT IN CLARKE VS. CITY OF PROVIDENCE — SOCIAL QUALITIES.

During the greater portion of his long life, Caleb Cushing was a 'public creature' in quite another sense than that in which Burke applied the phrase to his lost and idolized son. In his early manhood, as a Whig member of Congress, he denounced the extension of slavery in a vigorous rhetoric after which Garrison might have toiled in vain. In the full maturity of his great powers he presided over a Democratic convention which claimed that the constitution carried slavery into all the Territories of the United States. During the administration of John Tyler, and under the auspices of Daniel Webster, he went to China, and there impressed the Celestials with a permanent conviction of the adroitness and versatility of the American mind. During the administration of President Polk, he served as brigadier general in the Mexican war. Aided by Benjamin F. Butler and Henry Wilson, he formed the coalition which defeated the old Whig party of Massachusetts, placed Governor Boutwell in the executive chair, and seated himself upon the bench of the Supreme Court of Massachusetts, and elected Charles Sumner to the Senate of the United States. Under President Pierce, he held the office of attorney general. During the administrations of Presidents Lincoln,

Johnson and Grant, his advice was frequently asked upon questions of international law. He acted as counsel for the United States before the arbitrators at Geneva, and was nominated by General Grant for the office of chief justice of the United States. This nomination was withdrawn because it was supposed that objection would be made to his confirmation on account of his alleged sympathy with secession in its earlier stages. He was also appointed by General Grant Minister to Spain. I do not propose to comment upon his public career. Nobody ever questioned his ability or his personal integrity, but the frequent changes in his political relations impaired confidence in the stability of his convictions. Mr. Benton, who was anchored in one political creed from youth to old age, did not like the man 'who had acted with all parties without blending with any.' On the other hand, General Cushing was not an admirer of Mr. Benton. He said that the title of Mr. Benton's book, instead of 'Thirty Years in the United States Senate,' should have been, 'The Revolution of the Universe Around Thomas H. Benton for Thirty Years.'

During the latter part of his life, General Cushing was much employed as counsel in important litigations in different parts of the country, and among these were several cases in Rhode Island. In the case of Goodyear *vs.* The Providence Rubber Company I was associated with him, and had occasion to observe him as a man and as a lawyer. In all his relations with associate counsel, with his opponents, and with the tribunals before which he appeared, he

left nothing to be desired. Honorable Jonathan Chace remarked on a recent occasion that Carlyle did not understand 'the proprieties of little things.' General Cushing understood these perfectly. He listened with courtesy to every suggestion, and while he never indulged in fulsome flattery, he treated every one in such a manner as to give him the feeling that he put a high value upon any suggestion that was made by him. His power of rapid, continuous and concentrated work was very great. At the time when I knew him, his engagements in different parts of the country were such that it was difficult to get at him for the purpose of consultation. On one occasion, when an important hearing was to come on in the morning at Newport, he arrived the previous evening after a long day's journey, and met his clients and associates in consultation. He was then more than seventy years old, but he was as fresh and active as a boy. He kept us all at work until after midnight, and then retired to his own room and occupied himself for several hours in the preparation of his argument. At ten o'clock he appeared before Judge Clifford in full dress and with a neatly prepared manuscript, and no one who listened to his bold and vigorous presentation of his case would have suspected that for the previous twenty-four hours he had been without sleep, and much of the time travelling in cars and steamboats. He once remarked to me in reply to a suggestion that we should associate with us a distinguished lawyer: 'We don't want him. His mind is so constituted that he will inquire what is the law. What we want

is a man who will look about for reasons in support of our side of the case.' For this purpose I did not think that we needed any other associate than General Cushing himself. In fact, I think that this remark was a key to unlock his own mind. He could always find plenty of reasons in support of any position in which he found himself.

The operations of what Mr. Markland would call 'the lay mind' in the selection of counsel are sometimes peculiar. The late Tully D. Bowen, in illustration of this, used to tell the story of a man who went to a distinguished lawyer for an opinion, and after some days procured it very neatly engrossed and paid for it one hundred and fifty dollars. He then went to a lawyer of somewhat less note, and put the same question to him and got a prompt answer, for which he was charged five dollars. This he paid, remarking that he had paid Mr. ——— one hundred and fifty dollars for the same opinion, exhibiting the handsome document. 'Oh!' said his friend, 'that is for the blue ribbon and the sealing-wax.'

In one of the cases, Henry C. Clark *vs.* The City of Providence, probably there was no lawyer in the United States more competent to deal with the question involved than Mr. Parkhurst, who then held the office of city solicitor. But the city fathers thought that the interest of their constituents required the services of eminent counsel, and General Cushing was retained. The papers in the case were sent to him, but it was impossible to obtain an appointment for a consultation until the evening previous to the day when the trial was to be had. By some accident

he failed to keep even that appointment, and after a stormy passage on the Sound arrived at my office in the morning in a pouring rain-storm, about half an hour before the time for the meeting of the court. He had given the papers a hasty examination and was confident that the plaintiff should be non-suited, having mistaken his form of action. I soon convinced him that Mr. Tillinghast, the counsel for Mr. Clark, had made no mistake. He then expressed some doubt as to whether he was prepared to argue the case. I said to him: 'I shall open the motion upon the brief which Mr Parkhurst has prepared; Mr. Tillinghast will reply, and by that time I think you will be fully prepared.' We went to the court-house and the trial proceeded. Many members of the city council and other leading citizens were present. When Mr. Cushing's turn came to speak, he acquitted himself with marked success. I have seldom heard a more brilliant discourse. The venerable Chief Justice Brayton began to take notes of the argument, but his mental movements, though quite as sure, were not as rapid as those of General Cushing, and he soon laid down his pen and gave close attention to an argument which, as I remember, ranged over the whole field of the Roman civil law, and over all modern theories and discoveries upon the subject of sewerage. The only defect in the argument was that it had nothing whatever to do with the case before the court, but the audience retired in the full conviction that Mr. Cushing had earned a liberal fee, which was cheerfully paid to him. They were a little disappointed, however, with

the final judgment of the court, which was in favor of Mr. Clark.

Senator Anthony, who had heard of General Cushing's presence in the city, invited him to meet a party at one of those delightful dinners which for more than a generation have charmed the guests at No. 5 Benevolent street, and which now are among the bright dreams of the past which fate cannot destroy. General Cushing was the life of the party, talking and listening with equal grace and dignity, glancing at public events, recalling pleasant anecdotes of distinguished people whom he had known, and not disdaining to indulge in harmless personal gossip. When the carriage came to take him to the station we all regretted his departure, and after the door had closed behind him we drank his health, and all agreed with the host when he said: 'I have known many agreeable men and women in my day, but never any pleasanter company at dinner than Caleb Cushing.'

XXX.

JEREMIAH S. BLACK — HIS MODE OF ARGUMENT — INTELLECTUAL POWER AND ACUMEN — A CHARACTERISTIC LETTER.

In the winter of 1856–7, in Washington, Jeremiah S. Black made the acquaintance of Colonel and Mrs. Brown, of this city, and formed a close friendship with them which lasted to the end of his life. He knew of the suit, Goodyear *vs.* The Providence Rubber Company, but during its progress in the Circuit Court paid little attention to it. But when Judge Clifford announced his killing decree requiring the respondents to pay to the complainants more than three hundred thousand dollars as damages for the infringement of their right in the Goodyear patent, his friendship for Colonel and Mrs. Brown induced him to make a searching inquiry into the merits of the case. And after a prolonged and critical study of the record, he announced his unwavering conviction that the decree was unjust, against law, equity and good conscience. His reasons for this conviction were given to the counsel who had conducted the case in the trenchant terms which he was accustomed to use.

He was employed to argue the case for the appellants in the Supreme Court of the United States, and during the preparation of his argument, he had occasional consultations with General Cushing, and long and frequent interviews with James H. Parsons

and myself. In this way I became pretty well acquainted with his mental training and his way of looking at legal questions. This case bristled with questions of law, and upon some of the questions of fact there was conflicting testimony. It was instructive to observe the marked contrast between General Cushing and Judge Black in their mode of treating these questions. General Cushing did not express any decided opinion, but called into action all his resources to find reasons why the decision of the Circuit Court should be reversed, and how to present them in the most plausible and courteous manner to the Supreme Court. Judge Black expressed his own opinions in terms not at all complimentary to Judge Clifford, and gave the reasons for his opinions in clear, logical and sarcastic language, little calculated, as I sometimes thought, to win the favorable attention of the tribunal to which they were to be addressed. I listened to his argument in the Supreme Court, and I do not remember to have heard an argument which seemed to me more conclusive or less likely to accomplish its object. Judge Clifford was upon the bench, and not at all inclined to have his decree reversed; and yet the whole drift and tone of Judge Black's appeal for its reversal said plainly: 'I think the decision of the Circuit Court was both stupid and erroneous; and if it is sustained, it would only show that his associates are as stupid and incompetent as Judge Clifford himself.'

I think this was the great defect of Judge Black as an advocate. Of his intellectual power and acumen there can be no doubt. But when he had once formed

an opinion it was difficult for him to conceal his contempt for the opinions of those who differed from him. He told me that he once commenced an argument before the Supreme Court of Pennsylvania in these words: 'I have no doubt that every member of this court approaches the hearing of this case with a strong prejudice aganist my client and his cause. But I care nothing about prejudice. I am about to present to your honors a case which will stand against anything except actual corruption.' This was not the style in which my old instructor, General Carpenter, was accustomed to address the tribunal from which he expected or desired a favorable decision. If in any case he happened to differ from the court, he was careful to let them understand that he desired them to correct his errors, and all that he asked of them was an opportunity to explain his views, to the end that they might point to him, from the stores of their superior learning and experience, the correct view of the case.

This is not the place for a critical estimate of the ability and attainments of Judge Black, but from a long and intimate acquaintance with him, I desire to bear my testimony to his entire honesty and to the great ability with which he maintained his opinions upon all subjects. It was said of Carlyle that he was a Puritan who had lost his creed. Judge Black had early adopted a definite creed, theological, political, literary and social, and he never lost or modified his creed upon any of these subjects. In his comments upon those who differed from him, he was frequently unjust, but not intentionally so. He was essentially

kind and generous. All Republicans in the abstract were, in his vocabulary, corrupt and imbecile, and all Democrats honest and capable. But when he dealt with individuals, he was discriminating and not uncharitable.

I understand that his biography will be published in due time, and if it is well and thoroughly prepared, it will be a valuable contribution to the history of his time. I have listened with delight to his account of the last four months of President Buchanan's administration, and I have carefully read Mr. Curtis's 'Life of Buchanan' in the light of the conversations of Judge Black. In all essentials they agree, though on some minor points the memory of Judge Black was at fault. I sent to Judge Black a *Journal* containing a squib about Jefferson Davis's book, and a notice of Judge Clifford. I received a reply which is quite characteristic, and I venture to print it as more interesting than anything I could say about its author:

BROCKIE, NEAR YORK, Pa., August 7, 1881.

MY DEAR SIR:—I need hardly to say that I am obliged to you for that letter and for the paper containing some notices of Clifford's Life and Davis's book. You have done Clifford no wrong. Your estimate of his moral and intellectual character is fair. But from you a little enthusiasm might have been expected in speaking of the Catonian virtue, which resisted all temptations to participate in the rascalities of the last quarter of a century. Davis's book is a wretched thing, in some respects. I believe he means to be truthful, but he does not understand his subject. He got himself in such a fix that he cannot afford to see things as they are, and were. I did not look at his book until lately. Then it was shown me by a newspaper man, to whom I expressed my hasty opinion about it, and it seems from an advertisement that my words are to be printed in the Philadelphia

Press of to-day (Sunday). If they should fall into your hands, do try to be a little patient while you read them, I have only a general recollection of what I said, but I suppose I made some mistakes, as I generally do, when I get my mouth off.

You — even you — have fallen into a grave error, when you speak of Davis's attempt to prove that his theory of secession is right, and call it absurd, because the result of the war has shown its exercise to be impracticable. I do not blame you for believing that the beaten party is always in the wrong. If two or three abolition Yankees, with the assistance of half a dozen Irish and Dutchmen and as many niggers as they can gather up, manage to whip a southern planter, that shows that the southern fellow has no rights which a white man (or a nigger, either) is bound to respect. After that you may kill him if you please, or rob him, or you may disfranchise him of the right to make laws for the protection of himself and his children, or you may let him vote and then cheat him by a forged return. This is undoubtedly sound doctrine, and Davis acknowledges it, or as good as knocks under to it. But it does not practically apply until *after* the lickin' takes place. Davis's effort is to prove that he and his people had certain rights *before* the fight. It is no answer to say that they were lost by the fight. If the battle of Tours had teminated in favor of the Mahometans, the worship of Christ would have become impracticable in Western Europe, and the slightest disrespect to the badge of the camel driver would have been a great crime. But if some Christian man had afterwards written a book to show that Christianity was once a truth, and only converted into a falsehood by the power of Moslem swords, you might call him impudent, but you would hardly say that he was logically absurd. Davis's trouble is not where you find it. The right which he tries to defend *never* existed, either before the war or afterwards. You should meet him squarely and prove he and Lincoln and John Quincy Adams and Josiah Quincy and the Hartford Convention were all wrong from the beginning.

Your fling at Buchanan is (I say it with deference to your better judgment) a mistake of fact. He did not deny the power of the general government to prevent secession or revolution, or insurrection against its laws. Certain unfortunate phrases in his message have been misconstrued and misunderstood, as I told him they surely would be. There is no analogy at all

between his case and that of Davis. I wish you would reconsider this point. I do not ask you to contradict yourself, but the inner consciousness of being right is worth what it costs to any man, and to a gentleman of speculative turn like you, it must be a great comfort to verify his theories so that he can feel sure of not nursing wrong notions about his neighbors.

I am most truly yours, etc.,

J. S. BLACK.

ABRAHAM PAYNE, Esq.

XXXI.

WINGATE HAYES — MENTAL CHARACTERISTICS — EARLY LIFE AND ENERGY — OFFICIAL LIFE — INDUSTRY AND HONESTY — HIS POWER SUSTAINED TO THE END.

When Francis E. Hoppin presided in the Court of Magistrates, the bar were treated with a dignity and courtesy not always met with in other tribunals in this and other States and countries. Looking over his docket and naming a case, he once said to me: 'Will you allow the plaintiff to amend his writ?' 'Certainly,' I said; 'what is the matter with the writ?' The writ was amended and the trial of the case proceeded. Afterwards Mr. Hoppin said to me: 'I asked you that question because the plaintiff's counsel said that you were not on speaking terms with him, and that you were lying in wait to expose him to the court and the spectators.' This counsel was Wingate Hayes. At that time I had no personal acquaintance with Mr. Hayes, and if he had known much about me, I think he would not have suspected me of playing tricks. This anecdote is characteristic of the man; he was very sensitive, and therefore suspicious of enmity and ill-feeling towards himself where none existed. Long before his death we were intimate friends, and he often referred to this peculiarity of his temperament and to the suffering to which it had subjected him during his life. It seems that on one occasion when he was a student in

the office of Richard Ward Greene, I was in the office and did not speak to him; he took the notion that I was his enemy, and so told Judge Hoppin that I would not allow him to amend his writ.

Mr. Hayes was a very active and positive man, and there are few lawyers or business men who do not know as much about him as I do. But I have two good reasons for devoting a paper to him. He was for many years so conspicuous a member of my profession that the omission of his name might seem to indicate some personal feeling, and then my respect for the great and good qualities of his head and his heart makes this work a labor of love.

Mr. Hayes came from New Hampshire, and after graduating at Brown University studied law with Richard Ward Greene and entered at once upon the practice of his profession in this city with no advantages that I know of, except such as were inherent in his character and his ability. He attained a sure but not very rapid success. He laid aside as obsolete the old idea that a lawyer should sit in his office and wait for business. He was a thorough convert to the modern and prevalent opinion that if a man wants anything he should try to get it. He did not hesitate to make it known that he wanted professional business, and that he would be grateful to anybody who gave it to him. He did not undervalue official position, and if he wanted an office he said so, but he resorted to no underhand measures, but was frank and earnest in the expression of his desires and the presentation of his claims. He obtained clients and served them faithfully. He held offices and dis-

charged his official duties to the entire satisfaction of those who entrusted him with power.

He early entered the common council, and in due time became its president, and was one of a committee to revise the city ordinances. I think no member of the council who was associated with Mr. Hayes and who survives him, has forgotten the zeal and energy with which he labored in that body. He was for several years a member of the General Assembly and Speaker of the House of Representatives. He made himself a thorough master of Parliamentary law; no act of legislation escaped his careful scrutiny. He was one of the commission which revised the laws in 1857, and one of his associates, ex-Governor Howard, survives to recount his labors in that body. He was also one of the commission which revised the laws in 1872, and his associate, Honorable William P. Sheffield, without doubt, remembers the services of Mr. Hayes. The secretary of the commission, the Honorable John F. Tobey, is no longer with us, but there are those who have heard him tell of the vigilance with which Mr. Hayes prosecuted the work. Mr. Tobey was himself an earnest and industrious man, but I think he never labored more intensely than when acting under the direction of Mr. Hayes.

President Lincoln appointed Mr. Hayes United States district attorney for this district, and he held the office for many years. He discharged his duties with very eminent success. He was a great favorite with Judge Clifford.

President Johnson, instigated, I think, by some Pennsylvania politicians, appointed James H. Parsons

district attorney in the place of Mr. Hayes, who at this time had no desire to retain the office, and no disposition to be turned out of it. He and Mr. Parsons were good friends, and had a perfect understanding with each other. Mr. Hayes set about preventing the confirmation of Mr. Parsons, and gave the senators from this State no rest until they procured from the President a promise to renominate him in case the nomination of Mr. Parsons was not confirmed. Senator Anthony made this arrangement known to Mr. Parsons, and that genial gentleman was well satisfied with the result, and gave Senator Anthony and some friends a dinner at Wormley's in token of his good will. Of that dinner party, Major Poore and Abraham Payne alone survive. Mr. Hayes was reappointed district attorney, but his large private professional business occupied his time, and he resigned the office, and his friend and former student, John A. Gardner, was appointed in his place.

As a lawyer, Mr. Hayes was indefatigable in his research, and had the genius of advocacy. Once embarked in a cause, he had no doubt that his client was right, and all his witnesses honest and intelligent, and that everybody opposed to him, counsel, clients, witnesses, and the court itself, in case of an adverse ruling, were wholly misguided, if not intentionally in the wrong.

He did not work easily. He did not start extensive machinery by touching a button ; like a locomotive in a snowdrift, he whistled and rung his bell a good deal, but he was sure to bring his train safely into the station. As a man, Mr. Hayes was thoroughly

honest, and if sometimes hasty in judgments of others, he was prompt to repair the injury when his error was made known to him. He had none of that prudent, cautious self-control which in some sense is wisdom's root, but is also sometimes easy of attainment by a selfish man. Mr. Hayes was generous and always ready to render service or make sacrifices for those who had claims upon him. Those who employed him were much attached to him, and I doubt if he ever lost a client whom he had once undertaken to serve.

At a comparatively early age his health gave away under the pressure of his severe labor. I well remember my last interview with him. An important case was coming on in court, and he was unable to leave his house; he sent for me and requested me to appear for him in the case. Evidently with much physical suffering, and in the presence of his client, he went through all the details of a complicated case with an accurate memory and a clear comprehension of the legal principles involved in the controversy, and then turning to me, he said: 'I think that is a tolerably clear statement for a man who is supposed to have softening of the brain.' He evidently meant to have his client understand that his illness was temporary, and that any reports to the contrary were without foundation. But in less than forty-eight hours he had ceased to care about reports, and was 'where the wicked cease from troubling and the weary are at rest.'

XXXII.

JOHN F. TOBEY — HIS EARLY PROFICIENCY — THE BRIGHTNESS OF HIS MIND — SOCIAL QUALITIES AND LITERARY ATTAINMENTS — HIS KEEN INSIGHT INTO CHARACTER — HIS PUBLIC SERVICES — HIS UNTIMELY DEATH.

The sudden death of John F. Tobey called forth from the bar, the press and the community just expression of the estimation in which he was held, and I cannot expect to add anything to the vivid impression which he has left in the memory of all who knew him. From his earliest years he attracted the attention of all those who came near to him in any relation. Poetry written by him before he was ten years old was read and admired. The men who were boys at school with him loved to relate the facility with which he comprehended his school-boy lessons. What manner of man he was, and what rank he held in college, may be seen in the little volume in which Governor Bourn has gracefully recorded the history of his classmates on the occasion of their meeting, twenty-five years after their graduation. His fellow students at the Harvard Law School, some of them now risen to eminence in professional and public life, well remember his early attainments in the profession of his choice. The committee who examined him for admission to the bar were surprised at the extent and accuracy of his legal knowledge. He was early employed in important litigation, and associates and opponents acknowledged the skill and ability which

in quite early life placed him in the front rank of lawyers of his own age and gave assurance that he would reach the highest honors and emoluments of his profession. He was early called into the public service, and both in the city government and in the General Assembly gave ample proof that he was something more than a mere lawyer, and that he was both able and willing to do the State some service.

He had many and warm friends, and I have no right to claim any special place in his regard. But for many years we were thrown much together, and I had opportunity to know him quite intimately. John Pierpont wrote some verses about 'one whom he loved long since and lost awhile,' commencing with the line:

'I cannot make him dead.'

I do not think a day has passed since the death of Mr. Tobey in which I have not repeated to myself these words. For many years he was almost every day in my office, and there were few men or women of our common acquaintance, and few subjects and few events, that we did not talk over together. We did not always think alike, but I never failed to derive both pleasure and instruction from his conversation. He had the brightest mind I have ever known. At all times and upon all topics he was wide-awake. He was most affable and courteous, but he had also an intuitive knowledge of men. Napoleon said that he knew the depth of water of each one of his marshals. Mr. Tobey took an accurate measure of all the men with whom he came in

contact. He knew every judge upon the bench, and never failed to adapt his arguments to the tribunal before which he appeared. In consultation with his associate counsel he listened to every suggestion, but he relied upon his own judgment, and very often his senior would find himself acting upon the suggestions of Mr. Tobey under the impression that they had originated in his own mind. He knew the strong and the weak points of his opponents, and I can recall many instances in which a powerful antagonist at the bar was both surprised and alarmed when listening to the reply of Mr. Tobey to an argument which before he heard that reply had seemed to him conclusive and unanswerable. In the practical management of his causes his tact and judgment were unerring. In most important cases in which he was concerned he had usually senior associates, but at the time of his death he held the rank of senior counsel, and if he had lived I am sure he would have taken his place as an advocate and jurist with the most distinguished of his contemporaries.

But Mr. Tobey was something more than a lawyer. Upon all questions of public policy he had clear and decided opinions, and rare independence of judgment and action. He had little sympathy with 'isms' of any kind. He liked to walk in the old paths. He had a profound respect for established institutions and for opinions which had obtained the consent of wise and good men; but while he understood with Burke, that to innovate was not to reform, he also understood that a true conservatism must provide for growth, and his mind was always open to the

investigation of new schemes of policy in the State, and new suggestions in theology and social science. His early education had been thorough, and he had made himself familiar with ancient and modern literature, and he kept up his acquaintance with all the new books, and his critical estimate of their value never failed to delight and instruct his friends.

I could fill a volume with illustrations of the character of the service and ability of this remarkable man, but I must content myself with one or two. The firm of Hunt, Tillinghast & Co., of New York, had a controversy with Pooke & Steere, of this State, which took the form of an action of replevin in the Circuit Court of the United States. Mr. Tobey acted as their attorney, and had for associates his friend, Abraham Payne, and his old instructor, Thomas A. Jenckes. There were peculiarities in the characters of the plaintiffs and in their relations with each other which made it sometimes difficult to secure their harmonious action. Mr. Jenckes and Mr. Payne did not always agree as to the conduct of the case, and no junior counsel, I think, ever had a harder task than was set for Mr. Tobey in this case, and certainly no one ever performed his task with more eminent success. The result of the litigation gained for his seniors some credit which might more properly have been accorded to their junior.

The delicate and difficult position occupied by the senator from Providence in the General Assembly is well known. He has to care for the interests of his large constituency, and so to present them as

to secure the favorable consideration of the senators from the other towns in the State. This is by no means easy, and the success of Mr. Tobey was universally acknowledged by the body of which he was a member, and by the citizens of Providence without distinction of party.

The commission appointed to revise the laws, after a labor of several years made their final report, and with some amendments it is embodied in the General Statutes of 1872. Mr. Tobey was the secretary of this commission, and the important service which he rendered was so well known to his associates and to the members of the General Assembly that when a new revision was called for he was placed upon the commission, and his work appears in the Public Statutes of 1882. I knew something of the earnestness and assiduity with which he devoted himself to this work, and I think that his severe labor had much to do with the failure of his health.

If Mr. Tobey had lived, I am quite sure that his fellow-citizens would have assigned him a place in the councils of the nation, and that he would there have gained a reputation for himself and for his State not surpassed by that of the eminent men who have honored Rhode Island in the houses of Congress.

Not long before his death there was a vacancy in the House of Representatives, and among the candidates for the office the name of Mr. Tobey was frequently mentioned, and I said to him one day: 'I do not see why any man should want to go to

Congress, and, least of all, a man with your professional position and prospects.' 'I don't know about that,' was his reply. 'It so happens that my circumstances are such that I could live pleasantly in Washington, and I think I could do some credit there, both to myself and to the State.' To this I freely assented. He was a modest man, but he was conscious of his powers, and, like all able men, would have been glad of an opportunity to use them.

One morning Mr. Tobey called at my office and said that a case in which we were concerned was coming on. We walked together to the court-house. He was far from well, and on the way he expressed some anxiety about the difficult task of inducing the court to reverse one of its own decisions. He commenced his address to the court by an allusion to the fact that it was the anniversary of his admission to the bar, 'just twenty-five years before that day.' He called it his professional silver wedding. He paid a pleasant compliment to his associate, who had been one of the committee who had examined him for admission to the bar. He then spoke of the kindness and courtesy which he had uniformly received from the court during his professional life, and then proceeded to argue his case in so clear, forcible and exhaustive a manner that his associate had nothing to do but to express his entire concurrence in the argument of his junior. As we left the court-house, Mr. Tobey said to me: 'I don't believe that decision will ever be reversed.' I replied: 'It ought to be, and therefore we ought to presume that it will be.' We shook hands at parting, and I never

saw him again. The day but one after, I heard of his death.

Surrounded by devoted friends, by wife, mother and sisters who loved and almost idolized him, and with every prospect of a long, useful and honored life, death suddenly changed his countenance and sent him away. What shadows we are, and what shadows we pursue!

XXXIII.

ADMINISTRATION OF JUSTICE — DISSATISFACTION OF THE BAR WITH THE BENCH — CHARLES F. BROWNELL — A NATURAL LAWYER — HIS MANNER IN COURT — HIS CHEERFUL PHILOSOPHY — HENRY W. ALLEN — HIS EARLY PROMISE AND PREMATURE DEATH.

A very pleasant member of the bar, with a slight dash of sarcasm in his composition, met me the other day and wanted to know when I was going to write about the bad lawyers. I told him that would depend upon my outliving some of them. Then I have heard sometimes that offense has been taken at some allusion by me to some weakness or imperfection in men about whom I have written. But I was much pleased when not long ago an eminent citizen called upon me and commended me very highly for having told the truth about one distinguished man. He said he did not believe in suppressing the truth about a man simply because he was dead. All these things show that the old fable has many applications, and that it is not always easy for a reminiscent, even with the best intentions, to get his lawyers to market with universal approval. But as these papers draw to a close, I feel quite confident that whatever may have been their faults, they have not been, on the whole, ill-natured.

I hear complaints now and then of the mode in which justice is administered by our courts, and I listen to them with an amused interest. I remember

that when I was a student at law, I heard such lawyers as Thomas F. Carpenter, John Whipple and Samuel Y. Atwell find fault with the court over which Judge Job Durfee presided, with William R. Staples and Levi Haile as associates.

There have been changes in the court since then, but I remember no time when all the members of the bar were entirely satisfied with all the proceedings of the court; and I do not think their complaints have been wholly without foundation. This is only saying that judges are men. The court is a little more reticent than the bar; but I think judges have sometimes been heard to complain that lawyers are not absolutely perfect; that they do not always make thorough preparation of their cases, and that they sometimes tax the patience of the tribunal with irrelevant talk. My small reading in legal history assures me that this thing has been going on for a long time, and that it will continue until the millennium, when neither judges nor lawyers will be required in the conduct of the business of the world. Till then we must expect occasional failures in the greatest judges and the most perfect lawyers. It has been well said that Chief Justice Marshall made mistakes, and that even the tranquil mind of Tyndall sometimes lost its balance. Rufus Choate was obliged to remind a brother lawyer who complained of ill usage at the hands of the grand old Chief Justice Shaw, that under that magistrate, life, liberty and property had been safe in Massachusetts for thirty years. Joseph Story was a most amiable, upright and learned judge, but when he interrupted Samuel Dexter with the

remark: 'That proposition is not law, sir,' he afterwards admitted the justice of Mr. Dexter's reply: 'It is the law, and will finally be declared to be the law by this court.' When a Lord Chief Justice of England undertook to browbeat Erskine, he did not resent the bold reply: 'I know my duty as well as your honor knows yours; I shall not alter my course.' Benjamin R. Curtis came as near to being a perfect judge as the nature of the human mind will allow. At the meeting of the bar in Boston on the occasion of his death, an eminent lawyer said of him: 'I think his ruling passion was a desire to do justice.' And yet in his charge to the jury in a case in this district he put a construction upon a paper in the case which had not been contended for, nor even thought of, by counsel on either side. It was entirely wrong, and secured a very unjust verdict. It is not often that a great judge undertakes to decide a case upon a point which has not been suggested by counsel, but when he does so he is very apt to make a great mistake.

The bar and the bench act and react upon each other, and each is in a great degree responsible for the defects of the other. A diligent, learned and independent bar will secure the courteous and dignified attention of the bench. And a good court will be pretty certain to secure the assistance of a competent bar.

While writing this paper, I recall the name of a lawyer of whom I wish to say something. I knew Charles F. Brownell well. His office was for several years on the same floor with mine. He was what I call a natural lawyer; that is, he had a genuine love

of his profession. No disciple of Izaak Walton ever angled for a trout with more earnestness than Mr. Brownell would hunt up a question of special pleading. No hunter ever pursued his game with a keener eye than Mr. Brownell would watch the preparation of a case; and when he rose to address the court, no lawyer was ever heard with closer attention by the court or by the opposing counsel. Always neatly and appropriately dressed, his erect form and his flashing eye were noticed. As his clear, compact sentences, uttered in a ringing voice, sounded through the court-room, it might be said of him as Macaulay said of Dr. South when he preached before the king, the indolent aroused themselves to listen, and the fastidious forgot to sneer.

His career at the bar was short, but if he had lived until now he would be ready to be transferred from leadership at the bar to a seat upon the bench. I was greatly surprised one day to hear that Mr. Brownell was ill, and that in the opinion of his father, an eminent physician, he could not recover. I called to see him. He had been told that he could not live many days, but he was as calm and cheerful as if he had just won a verdict in an important case. His whole air and manner seemed to say:

> 'Safe in the hands of one disposing power;
> Or in the natal or the mortal hour.'

That was rather a remarkable group of young lawyers who started in the race together, and were intimate friends, James H. Parsons, John F. Tobey, Charles F. Brownell, Horatio Rogers and Francis

Colwell. Parsons, Tobey and Brownell have fallen by the way. Rogers has left the bar for more congenial and, I hope, more profitable pursuits. Mr. Colwell is a leader at the bar, but thus far has resolutely refused a seat upon the bench.

Before closing this paper I wish to gratify my own feelings by the introduction of one other name. I had but slight acquaintance with Henry W. Allen. Knowing that he had investigated an important question with some care, I sought information from him upon the subject, and was much gratified by his courtesy and the intelligence and conscientiousness with which he had pursued his investigations, and the firmness with which he maintained his opinions. Afterwards I happened to be in court when one of his cases was called. His senior was detained by illness, but he assumed the conduct of the case with a modest confidence, such as the Duke of Wellington might have felt when before a battle he said: 'I have made the best dispositions in my power, and I leave the rest to Jehovah.' Mr. Allen's client was unpopular, a kind of Peter Peebles, who had been hanging about the court-house for years until the call of a case in which he was concerned was a signal for fun at the bar, and a summons to the court for the exercise of that great judicial virtue, patience. But Mr. Allen made an argument which, for clear statement and logical reasoning, has not often been surpassed. He was listened to with close attention, and although he did not seem to be physically very strong, I felt sure that he would finally reach the front rank of the bar.

It was but a short time afterwards that I heard of

his death. Among the men of whom I have written, there have been many more prominent in professional and public life, but not one I think more worthy of affection and respect than Henry W. Allen.

XXXIV.

LUCIUS C. ASHLEY — JEROME B. KIMBALL — SULLIVAN BALLOU.

I am reminded by a friend that I might properly have added other names to the group of lawyers who surrounded Charles F. Brownell. It was no part of my purpose in these papers to make more than a passing allusion to those lawyers who are still in active service, wearing the honors and enjoying the emoluments which are the just rewards of ability usefully employed, and whose daily walk is observed by all their fellow-citizens. I must, therefore, leave Charles H. Parkhurst in the hands of his friend "H," who weaves garlands with equal generosity for the living and the dead. I must relax the rule a little in favor of Lucius C. Ashley. His removal from this city to another field of labor must be my excuse. By his own unaided exertions, Mr. Ashley early secured professional eminence at the bar of this State. His sound judgment, his absolute integrity, his careful and thorough work, and his fidelity to every engagement, secured the confidence of all classes of the community. He was intrusted with important judicial duties, and was also a member of the General Assembly; and in all the positions into which he was called, he fully justified the confidence that was reposed in him. I think there have been few lawyers in this city within the last forty years who have not at some time contemplated a removal to the city of New York. Mr. Ashley had the cour-

age to make the experiment, and has had no reason to regret his decision. He occupies an honorable place among the trusted and distinguished lawyers of the metropolis, and, as I am told, has secured an ample fortune. Since his residence in New York he has given himself the pleasure and instruction of foreign travel, and has found time to make himself familiar with the best literature. Surrounded by friends in his native and adopted city, generous to all who have claims upon him and faithful to every trust, there lies before him the prospect of a long and useful life.

Rarely has any young lawyer entered upon professional life with such brilliant prospects as Jerome B. Kimball. Within a very few years after his admission to the bar, he was elected to the important and responsible office of attorney general of the State, and entered upon the discharge of its duties with the energy and enthusiasm which were part of his mental constitution. It was a striking proof of the genial nature of the man that all the young members of the profession witnessed his honors without envy, and were proud of the distinction which he won in the discharge of his official duties. In one important trial in this county, the court-house was crowded, and a large attendance of the bar bore witness to the interest that was felt in the young attorney general. His argument fully justified the anticipations of his friends. Not long after this time his health failed and he was compelled to withdraw from the active practice of his profession; but he has pursued his studies in law and in literature, and whenever I meet

him, his cheerful greeting bears witness to the courage with which he has borne his infirmity. This life-long passive courage is something, compared with which the courage required upon the battle-field is a small affair. There comes a time when, to all men, as to the brave old Samuel Johnson, success and failure are empty sounds. In that hour when a man is reduced to his 'pure individuality,' and tested by his character and not by his circumstances, what is called success may have turned out to have been defeat, and failure may have proved to have been a victory.

The reverent affection which preserves the memory of Sullivan Ballou as a patriot soldier may have somewhat obscured his just reputation and merits as a lawyer. He had already achieved eminence in his profession and in the General Assembly, and was rapidly rising to distinction among the public men of the State, when the attack was made upon Fort Sumter. He at once decided to enter the army. His friends endeavored to persuade him that his duty to his wife and his young children required him to remain at home, but he said: 'My country calls for me, and if I fall in her defense, my family will be provided for.' He fell at the first battle of Bull Run, 'pouring out his blood like water, before he knew whether it would fertilize a land of freedom or of bondage;' thus early joining the ranks of thousands of young men who died that their country might live.

'On fame's eternal camping ground,
Their silent tents are spread,
Where glory guards with ceaseless round
The bivouac of the dead.'

Mr. Ballou had the temperament of an orator, and if he had lived, he would have demonstrated in the forum and in the Assembly the absurdity of the opinion sometimes expressed, that there is no longer any room for eloquence in transacting the business of the world. When this rare gift has been given to a man, the subject and the occasion will be found for its use.

XXXV.

PELEG JOHNSON — NOT A LAWYER, BUT DESERVING OF A PLACE IN THESE PAPERS — A MARKED MAN — HIS VIEWS ON SECOND MARRIAGES AND MATRIMONIAL TROUBLES — ANECDOTES OF HIS FAMILY.

When Mr. Erskine commented with severity upon the conduct of the Earl of Sandwich, the chief justice interrupted him, saying: 'The Earl is not before the court.' 'For that very reason,' said Mr. Erskine, 'I will bring him before the court.' Peleg Johnson was not a member of the bar, but, as will presently appear, I have good reason for giving him place in these papers. He has recently been described in an article in the *Journal* as the brother of the late Joseph G. Johnson. This is very much as if a writer, anxious to let the world know who George Washington was, should describe him as the second husband of the widow Custis. Peleg Johnson had at least two brothers and other relatives of note, but he was clearly the head of the family. I have often heard him discourse upon very weighty topics. Without knowledge of any other than the English language, he was quite expert in Biblical criticism, and, without knowing the meaning of the word, he came very near being an agnostic. His notions about the Old Testament Scriptures were quite as original, and almost as absurd, as those set forth by Matthew Arnold in his book entitled 'Literature and Dogma.'

Mr. Johnson lost his wife, and, according to a well-known theory, he proved his appreciation of the only bliss of Paradise which has survived the fall by promptly seeking a matrimonial alliance with a worthy lady with whom he had long been acquainted. One evening, when he called upon her, she said to him: 'Mr. Johnson, my friends think that it is not proper for me to receive your attentions so soon after the death of your wife.' To this suggestion he replied: 'I have been a constable for more than thirty years, and during that time I have been in constant attendance upon the courts of this State, and I think I ought to know something about law, and I can tell you that when a woman has been dead and buried four months, she is just as dead in the *eye of the law* as if she had been dead a year.' This seems to have satisfied the good lady, and partly in settlement of account for services which he had against her, and partly in view of a contemplated marriage, she conveyed to Mr. Johnson a considerable portion of her property. They were married, and for some time lived in that harmony which was the reasonable result of a contract entered into between parties of mature years and after due deliberation.

But, for some unknown cause, Mrs. Johnson became dissatisfied and left the bed and board of her husband. She procured the appointment of Alpheus J. Snow as trustee of her property. The trustee having secured the services of ex-Chief Justice Greene, filed a bill in equity to set aside the conveyances made by Mrs. Johnson to her husband before

marriage. Thus the ex-chief justice and the constable of thirty years' standing were pitted against each other. For though Mr. Johnson employed counsel, he did not fail to give them the benefit of his experience. I think he decided after careful consideration to meet the attack of the ex-chief justice by what may, perhaps, be properly termed a flank movement. He obtained an interview with Mrs. Johnson, and persuaded her to resume her marital relations with him. She then united with him in a petition for the removal of the trustee. This petition was strenuously resisted, but was finally granted by the court. The grounds upon which the court based its decision are fully set forth in the fifth volume of Rhode Island Reports, and ought to be carefully studied by all married people who contemplate litigation about their property.

The case was sent to a master to take the account of the trustee. Among his charges was a bill presented to him by his counsel. This bill contained a great number of small items running over a long period of time. It seems that the trustee was accustomed to visit his counsel for advice at frequent intervals. For each visit he was charged, I think, the sum of two dollars. Mr. Johnson presented to the master an argument to this effect. If the counsel was competent to give advice, he ought to have been able properly to instruct the trustee in one or two interviews, and ought not to be allowed to charge for more. If, on the other hand, the faculties of the trustee were such that he required to have the advice often renewed, he should pay for it out of his own estate.

This reasoning satisfied the master, and charges amounting to some two hundred dollars were reduced, as I remember, to ten dollars. This ought to be a warning to trustees to get their advice in lump, and not in too much detail. I think I have shown that Peleg Johnson was not in error when he told the lady whom he intended to marry that he had had an opportunity to know something about law.

Though I claim that Peleg Johnson was the head of the family, I did not mean to disparage the ability of his brother Joseph. This gentleman was president of the town council of Cranston. Soon after the Dred Scott decision was announced, and when presiding over the board of canvassers, he said: 'Gentlemen, you are doubtless aware that the Supreme Court of the United States has recently decided that persons of African descent are not citizens, and we must carry into effect the decision of the highest legal authority.' Just at this point a well-known political 'worker' whispered in his ear: 'They are all going to vote for us at this election.' Mr. Johnson, without noticing the interruption or changing the tone of his voice, proceeded: 'But we will not be harsh in the application of the rule. If any colored person can show that he is of good character and disposed to support the constitutions of this State and the United States, we will allow his name to remain upon the list.' The rule thus laid down by the president of the town council of Cranston, by a sort of reversed application may serve as a guide to President Cleveland, and enable him, at the same time, to sustain the civil service law and remove Republican office-holders.

Mr. Joseph G. Johnson once had the misfortune to be a party to a bill in equity. His case was presented to the court by one of the ablest members of the bar, who was also a very rapid speaker. Being asked how he liked the argument of his counsel, he replied: 'It was very good indeed. I do not see how it could have been better. If I should venture to make any criticism upon it it would be this: 'From what I know of judges, if he had kept his words a little farther apart, I think they would have had a better chance to settle down among the ideas of the court.' I repeat this suggestion of a very intelligent client for the benefit of the members of my profession.

XXXVI.

BENJAMIN COZZENS — CAREER AS A MANUFACTURER — SUCCESS AT THE BAR — REMOVAL TO NEW YORK — HIS COURAGE AND FIDELITY — HIS MENTAL CHARACTER.

I was introduced to Mr. Cozzens in the spring of 1844. He was then conducting an extensive and successful business as a calico printer, at Crompton, in this State. He had just returned from a visit to Washington, where he had an interview with Henry Clay, then recently nominated for the Presidency. He reported the interview in these words: 'I asked Mr. Clay what he thought of his prospects. Raising himself to his full height and stretching out his arm, he said: "My dear sir, there is not a speck in the horizon."' This confidence of the candidate was shared by his party, and Mr. Cozzens looked for permanent prosperity in his fascinating and perilous business under the protection of the tariff of 1842. About this time he sent a piece of his prints to the *Journal of Commerce*, and the editor took this as an indication that some of the manufacturers were in sympathy with the free-trade doctrines of that paper. Mr. Cozzens sent a communication to the paper defending the policy of protection, which was published in connection with the editor's reply. I have read and heard much upon the subject since then, but I do not know that I have come across any substantial addition to what was contained in the communication of Mr. Cozzens and the reply of the editor. And I

would recommend political orators of this generation to hunt up this correspondence in the files of the *Journal of Commerce.* It has been said of Bacon's essays, that one of them properly beaten out would fill a volume of modern thought upon the same subject. I think Mr. Cozzens' letter, properly treated by a member of Congress, might fill a large space in the *Congressional Record* in defense of protection to American industry.

When I came to know Mr. Cozzens well, I was surprised that any business enterprise could have tempted him to abandon the profession of the law. He possessed the mental and physical qualifications for success in that arduous profession. He had indomitable will, great power of concentrated and continuous labor, industry which nothing could weary, and a patient attention to details, with a genuine love for the stern contests of the forum. He told me that when a boy in college he thought he should like to be a lawyer, but doubted his capacity to achieve eminence in that profession. But he went into the court-house one day and heard some of the lawyers then leaders of the Rhode Island bar, and made up his mind to try and see what he could do. In due time he was admitted to the bar and opened an office in the village of Pawtucket, and was soon engaged in an extensive and lucrative practice, chiefly in the county of Bristol, in Massachusetts. He loved to relate anecdotes of Massachusetts judges and lawyers of the olden time. He would allude to their long night sessions at whist, saying that he could not understand what pleasure there could be in that mode

of spending time. I think he sympathized with the remark of Sir George Cornewall Lewis, that life would be very tolerable but for its amusements. He did not know any game of cards, he drank no wine, nor did he use tobacco in any form. He occupied his leisure time in preparing a volume on patent law. Judge Story examined his manuscript, praised it highly and advised its publication. But another author got the start of him. While at the bar, Mr. Cozzens was one of the counsel in the Sergeant's Trench case, which is still pending, and of which I shall have something more to say. In this case Mr. Cozzens was associated with Nathaniel Searle, and his opponents were John Whipple and Daniel Webster. Mr. Cozzens had charge of the preparation of the case, and had many racy anecdotes to tell of the parties and the witnesses. In one instance the contest took the form of a hand-to-hand fight in the trench itself between two of the opposing parties. The clients of Mr. Cozzens were successful in the case and they looked upon it as a famous victory, and attributed it mainly to the skill and energy of Mr. Cozzens.

He left the bar and was engaged in manufacturing business until 1846. Mr. Clay had been defeated, the tariff of 1842 was repealed, and Mr. Cozzens, in common with other leading manufacturers, was compelled to suspend. After heroic but not successful efforts to retrieve his fortunes as a manufacturer, Mr. Cozzens resumed his original profession and opened an office in Providence. He was then past middle age, and it could not have been very pleasant to resume work to which he had been unaccustomed for

nearly a generation. But I think there are still living members of the bar who can bear witness to the energy and courage with which he took up the task. He was much employed by some of his old business friends, and notably by those in Kent county, where he had been so long and favorably known as a manufacturer. The energy, perservance and ability with which he conducted his cases took some of the younger members of the profession by surprise, and the older members found in him a foeman quite worthy of their steel.

While at the bar here, the old trench case, after a sleep of more than a quarter of a century, awoke in the Circuit Court of the United States, and ex-chief Justice Greene, who, as a young man, was master in chancery in the case, and Mr. Cozzens, who had been junior counsel, found themselves opposed to each other. I do not remember that there was any talk of compromise, and in the encounter of these old athletes, Mr. Cozzens was again victorious; and the case, as I said, is still pending. Great judges have dealt with the case — Story, Curtis and Clifford. Great lawyers have contended with each other across this little stream — Webster, Whipple, Searle, Cozzens, Greene. The case is now represented on one side by Abraham Payne and William W. Blodgett, and on the other by Edwin Metcalf. Not long since it seemed as if Mr. Blodgett or Mr. Metcalf might be called upon to perform judicial duties. As it is, they will have an opportunity to carry on the old controversy. But it is by no means certain that they will live to see its end. It saw the beginning of all the lawsuits

now pending in Rhode Island, and I see no reason to doubt that it will survive them all. For aught I can see, it may continue to flourish in undiminished vigor when some traveller from Omaha shall take his stand upon a broken arch of Pawtucket bridge to sketch the ruins of the largest town in New England.

In 1859, Mr. Cozzens, then very near the end of his term of threescore and ten years, removed to New York, and in connection with his son commenced the practice of the law there. He had remarkable success, and soon established a pleasant home, where it was his delight to receive visits from his daughter and her children. I think these were the happiest years of a life which had been tried by both extremes of fortune, and never disturbed by either. But clouds will gather about the closing days. The death of a granddaughter to whom he was much attached was soon followed by that of his wife, who had nobly sustained him in all the great crises of his life. But he bated no jot of heart or hope, but to the last kept at his work, and when, at the age of seventy-four years, being taken suddenly ill and advised by his physician that he could live but a few hours, he sent for an amanuensis and dictated an argument in an important case.

There were strong men in Rhode Island, contemporaries of Mr. Cozzens — William Sprague, John H. Clarke, James F. Simmons, Samuel Dexter, and others, more or less intimately connected with him, sometimes as associates and sometimes as rivals. I think he was the intellectual peer of any one of them. Like all the really great men I have known, he was a

lover of good books. He was not a miscellaneous reader, but he always had in hand some standard book. And whatever had been the vexations or fatigues of the day, it was his custom to spend some hours of the evening in quiet and careful reading. But he was very fond of social intercourse, and always ready to lay aside his book for conversation with his family or friends.

His family were Baptists, but he early united with the First Congregational church in this city, and was to the end a Channing Unitarian, looking with little favor upon the more radical wing of that denomination. While in New York he was a regular attendant upon the preaching of the Rev. Dr. Bellows, and I have reason to know that that distinguished clergyman entertained a high regard for Mr. Cozzens, and cultivated his friendship.

XXXVII.

CHARLES F. TILLINGHAST — HIS MODEST OFFICE AND LARGE PRACTICE — HIS SELECTION OF ASSISTANTS — HIS CLIENTS — HIS RELIGIOUS VIEWS — HIS HONORABLE PLACE IN THE MEMORY OF CONTEMPORARIES.

> "——— to whom add
> A smaller tally of the singular few
> Who, gifted with predominating powers,
> Bear yet a temperate will and keep the peace.
> The world knows nothing of its greatest men."

If that nation is happy whose annals are vacant, the individual is presumably wise whose life furnishes small material for the historian or the biographer. I have read all the books with which Mr. Froude has favored the world concerning the Carlyle family, and I think old James Carlyle was a much wiser man than his son Tom. And I am clearly of the opinion that old Mrs. Carlyle was much more useful in her generation than the brilliant and sarcastic helpmeet of her son. In these modern times no man has made so much noise as Napoleon Bonaparte, and certainly no man was of less use to the world or to himself.

During the past fifty years there have been quite a number of eminent lawyers in Rhode Island. Some of them are remembered for their wit, some for their eloquence, some for their learning, some for their forensic triumphs, but no one of them has rendered more valuable service to the community, or performed his work more faithfully and more quietly, than Charles F. Tillinghast.

When I was in college I saw Mr. Tillinghast now and then at his desk in the old building where the Merchants Bank now stands. Some of the prosperous lawyers now occupying their elegant apartments in the Vaughan building would be surprised if they could see the small room and the plain desk which were sufficient for the man who had the largest clientage of any lawyer in the State. His frame was large, his aspect was grave, and a certain modest dignity was what even a casual observer would notice as the leading characteristic of his manner. Ex-Chief Justice Bradley, for many years his partner, in a recent publication, alluding to Mr. Tillinghast, says: 'I can never permit myself to mention his name without an expression of respect.' These words happily define the feeling with which this remarkable man was universally regarded.

When I entered the office of General Carpenter as a student, Mr. Tillinghast commenced more actions than any other lawyer in the city. He never argued a case in court. Why he declined to do this, I do not know. Many of the most important litigations which reached the tribunals had their origin in his office, but they were always conducted in court by other counsel. I have heard that Mr. Tillinghast acted upon a settled rule not to give any advice to a client as to the selection of counsel for the argument of his case, but to leave him to the exercise of his choice upon such information as he could obtain elsewhere. And it is a striking proof of the confidence which his professional brethren had in his integrity, that no whisper was ever heard among them that he

had ever used the slightest influence in the selection of the counsel who were to conduct the important cases originally placed in his hands. Among these counsel were John Whipple, Samuel Y. Atwell, Richard W. Greene, Albert C. Greene, Thomas F. Carpenter and Samuel Ames. These men were all his personal friends, and with one accord they bore testimony to the solid qualities of his character. Lawyers talk a good deal about each other, and it does not often happen that any one of them escapes criticism from his brethren, but I do not remember to have heard any comment upon the character or conduct of Mr. Tillinghast that would not have given pleasure if it had been repeated to his children or his wife.

His clients came from all classes of the community. South Water street went to his office for advice; Tully D. Bowen, Truman Beckwith and Amasa Manton were frequently seen there. Samuel F. Man and James F. Simmons were often in the law, and while they justly reposed a good deal of confidence in their own judgment in legal matters, they also wanted to know always what Charles F. Tillinghast had to say about the case. All the lawyers consulted him. Very often have I known my old instructor, General Carpenter, after consulting with a client, before giving his opinion, have a talk with Mr. Tillinghast. Farmers from the country towns brought their controversies to him for adjustment. Small shopkeepers and poor women went to him freely, and were received with as much kindness and consideration as his wealthy and important clients. All this

was in the main due to the confidence which was felt in his capacity and his integrity. But there is an authentic tradition that he rendered much gratuitous service, and I believe that many of his clients, especially those of the South Water street class, went to his office more frequently than they would have done if he had made a charge for every visit.

Mr. Tillinghast was frequently spoken of as *the* honest lawyer. When this saying was quoted to him on one occasion, he was too just a man to accept the compliment. He quietly said: 'For every honest business man you will bring to me, I will find for you an honest lawyer. I do not claim that lawyers are better than other men, and I do not think that they are any worse.' But no class of men have less excuse for dishonesty. The business of a lawyer is to give wise advice, and when controversies reach the courts, to present the case of his clients fairly. If he fails to do this, it is because he is tempted by a dishonest client and yields to the temptation. Of course there are bad men among the members of the bar,— men who foment litigation, misrepresent facts and misstate the law through ignorance or design,— but, as a rule, every successful lawyer prevents more litigation than he ever openly conducts, and conducts the litigation with which he is charged with fidelity. And after a period of observation not now very short, and without disparagement to any other class of men, I am confident that no profession or occupation demands more time or labor for which no pecuniary reward is expected or received than that of the legal profession.

Mr. Tillinghast was never much before the public. He did not haunt insurance offices or editorial rooms. He was not often in the court-house, though sometimes when an important case was on trial he would sit by the counsel who conducted the case, occasionally taking a note or making a suggestion. Early in his professional life he had some judicial experience as a member of a court long since abolished, and the name of which I have forgotten. When the General Assembly provided for a reporter of the decisions of the Supreme Court, the appointment was offered to him and declined. He had much employment as referee and master in chancery, and was often assignee and trustee of large estates. During a great portion of his professional life he was the only lawyer in this city much employed to examine and certify titles to real estate.

About his religious opinions I know nothing except that he was a constant attendant at the Unitarian church in Mathewson street. But his life was in the right, and, according to better authority than even that of Pope, the form of his faith could not be far wrong. I am not quite certain whether he was ever a member of the General Assembly, but it is quite certain that if he would have accepted the office it would have been tendered to him by all good citizens outside of the ward politicians. He was a member of the convention which framed the present constitution of the State. He lived to observe the practical operation of that instrument, and it would be interesting to know what he thought of some of its leading features. If he were living now, I should

like to have his decision upon the conflicting interpretations of constitutional law between his old partner, ex-Chief Justice Bradley, and the present chief justice of the State.

Not long before his death, Mr. Tillinghast acted as master in chancery in an important case in which I was counsel for one party, and Thomas A. Jenckes for the other. The trial lasted for several months, and during this time I had occasion to observe with admiration the patience, intelligence and impartiality with which Mr. Tillinghast, though evidently laboring under physical infirmity, discharged his duties.

Edmund Burke once said that no man in public life, however brilliant his reputation, was greater than some men who were never heard of beyond a limited circle of intimate friends. Mr. Tillinghast was as well known as any member of his profession, but not so conspicuous as some of them. The time is near at hand when the memory of all of them will be a faint tradition; but while any of their contemporaries survive, the name of no one of them will hold a more honorable place than that of Charles F. Tillinghast.

XXXVIII.

NATHAN F. DIXON — HIS EARLY LIFE — POLITICAL CAREER — MENTAL QUALITIES — DOMESTIC TASTES — LOVE OF ANIMALS — HIS EXAMPLE.

One morning there came into the office of General Thomas F. Carpenter, when I was a student there, a man whose form, after the lapse of half a century, is distinctly before me as I write. He was above the ordinary height. He walked with a slight stoop, but with a firm step. He was clothed in the old style, wearing a black dress-coat and a ruffled shirt, and his gray hair was neatly dressed in a queue. His bearing was that of a man who had fought a good fight, had kept the faith, and was confidently but not impatiently waiting for his crown. This was Nathan F. Dixon, then a senator of the United States from this State. He was born in Plainfield, Connecticut, in December, 1774, graduated at Brown University in the class of 1799, took up his residence in Westerly, in this State, in 1802, and died in Washington, January 29, 1842. He had a good standing among the lawyers of his generation, was for many years an honored member of the General Assembly, and with the general approval of the people of the State was elected a senator in Congress in 1838, which office he held at the time of his death. There are two traditions about Mr. Dixon which are well authenticated, and which throw more light upon his character and his position in the State than elaborate biography could do. One is, that the Honorable Elisha R.

Potter, who was a man of wonderful ability, and at times had almost absolute control of the politics of the State, always felt and acknowledged the influence of Mr. Dixon when he was opposed to him in the General Assembly. The other is, that on one occasion he presided in a caucus of Whig senators in Washington when a resolution was unanimously passed. After announcing the decision, Mr. Dixon said: 'I should like to say a few words upon this subject.' This created some surprise among the senators, but the clarion voice of Henry Clay rang through the chamber: 'Let us hear what Mr. Dixon has to say.' He briefly stated his objections to the resolution, and it was unanimously rescinded.

I think the sudden death of Mr. Dixon made a new combination among the politicians, and changed the history of the State. At the time of his death his son, who bore his name, was in his early manhood. He was born in Westerly in 1812, prepared for college at Plainfield Academy, graduated at Brown University in the class of 1833, studied law in his father's office and at Harvard and Yale, and practiced law with success in this State and in Connecticut until his death, April 11, 1881. During his life he was almost continuously a member of the General Assembly from the town of Westerly, except during the seven or eight years when he was a member of Congress from the Western District. The spontaneous tributes of respect and affection which his death called forth from all classes and conditions of the people are fresh in the memory of us all.

Few things, I think, are more unsatisfactory than

an attempt at an analysis of character. There is no man who is much talked about who does not know that censure and praise are very apt to be misapplied in what people say of them. The old Frenchman was right who said that a man was not very good who was not in some respects better than his best friends supposed him to be, and no man was very bad who did not know worse things about himself than any of his enemies had found out. I never think of Mr. Dixon as a lawyer, though he was eminent in his profession; nor as a politician, though he did the State much service. I think of him as a great, strong man walking through life with modesty, dignity and conscious power, answering all the expectations of his friends in every position to which he was called, always doing what he thought to be right, and commanding the respect of those who differed from him in opinion. When he was seen on the street:

> '——— Who turned to look again,
> Saw more than marks the crowd of common men.'

When the rumor went about that Mr. Dixon was in the city, men went to the *Journal* office, where they expected to find him with his friend, Henry B. Anthony, and to enjoy his kind and cordial greeting. We all held it to be a great privilege to meet him at Senator Anthony's house, and wherever Mr. Dixon sat was the head of the table. He did not talk much, but he was an excellent listener, and it might be truly said of him, as was said of another man whom the people of Rhode Island delighted to honor, 'when he did speak, all men were attentive, sure

that what he said would be wise, tolerant and kind.' When on rare occasions he appeared in the court-room in this city, he was greeted with singular affection and respect by the bench and the bar. When he rose to speak in the General Assembly, he commanded the close and silent attention of that body, for he had always something to say, and all men knew that he meant what he said. He had positive convictions, and therefore met at times with strong opponents, but never, I think, with enemies, except in one or two cases, where the character of the men made their enmity very high commendation of the man against whom it was directed.

I do not think that Mr. Dixon was a general reader, but he probably knew all the books that were worth knowing, and he used materials out of which books are made at first hand. He had open vision for field and sky, he enjoyed the society of dumb animals, and he read his fellow-men with insight, accuracy and charity. He was not one of those prudent people who never speak evil of anybody, and who get a reputation for good nature by concealing their real opinions, but he spoke the truth about everybody; yet he spoke always in charity, and no anger, 'vehement or durable,' was ever kindled in him except by meanness, ingratitude or injustice. I never knew a man less inclined to dwell upon the weakness and frailties of his fellow-men. From two very common propensities of human beings he was singularly free,—the love of gambling and the love of gossip. He wanted nothing that he did not pay for, and he meddled with nothing that did not concern him.

Without any pretension to philanthropy, he found something good in all the men and women whom he met. He had a genuine respect for the sacred rights of human nature, and was absolutely free from that spirit which makes some men pass by on the other side thinking of themselves, 'I am holier than thou,' and at the same time, looking extremely small under the scrutiny of the All-Seeing Eye.

I recall with distinctness one scene in the life of Mr. Dixon. In the General Assembly, in what was known as the Hazard and Ives controversy, the debate had dragged its slow length along with bitter personal and partisan feeling and in bewildering discussion of legal and constitutional questions, when Mr. Dixon, in a speech of less than half an hour, brought the controversy to an end. It was the knight in black armor entering the lists at the right time, giving victory to the cause which he had espoused, and departing claiming neither recognition nor reward.

I have always thought that the people of the State suffered a loss when Mr. Dixon failed of his election to a seat in the Senate of the United States, and though, so far as I know, he never spoke of the subject even to his most intimate friends, I think he felt that he had been deserted by those who were under obligations to him. He was not a man to overvalue honors or emoluments, and he was, as far as possible, removed from the character of an office-seeker. But in the Senate he would have taken rank with the first men there, and his election would have been the suitable reward of his long service to his friends and

to the people of the State, and would have made a permanent record of the appreciation which all wise and good men had of his character and ability.

But I think he was happier in Westerly than he would have been in Washington.

> 'More true joy, Marcellus, exile, feels,
> Than Cæsar, with a Senate at his heels.'

He loved to watch the growth of the crops upon his farm. He loved and was beloved by his family, and he enjoyed the society of his cattle, his horses and his dogs. George Eliot finely says of the love of animals: 'They ask no questions, and they make no criticisms.' It was said of Daniel Webster that he loved to look in the faces of his oxen; they had never deceived nor betrayed him.

I much commend the suggestion of the commission on terminal facilities that there should be a place for monuments for men who have served the State in arts, in arms and in civil life; and I hope that the open space which their plans provide will be filled with these evidences of a just appreciation of merit. But I would have a bronze statue of Nathan F. Dixon on a pedestal of granite in some conspicuous place in his native town, where all citizens leaving the State might look upon it and remember to bear themselves in a manner worthy of the little Commonwealth, and all persons coming into the State might see what manner of man its people held in honor and esteem.

XXXIX.

THE OPINION OF THE NINE LAWYERS — WHAT IT WAS ABOUT — THE LAWYERS WHO SIGNED IT — ITS OBJECT — THE DOCTRINE OF MR. DORR — THEORIES OF THE CONSTITUTION.

In March, 1842, just forty-three years since, there was published in this city a remarkable document. It appeared in a newspaper of a very limited circulation, and which the so called respectable classes would not like to be seen reading. The feeling about what were called the suffrage newspapers at that time it is now difficult to understand. When one of them was seen at the door of my office in the Granite building, a very kind old gentleman who occupied an insurance office on the same floor, in the most friendly manner advised me to stop that paper if I expected to have any business. About this time, a prominent bookseller in Hartford, Connecticut, kept the works of Dr. Channing under a counter lest the exposure of them should deprive him of his orthodox custom. In this city, as a rule, only men with long hair, and women with ill-fitting clothes and advanced ideas, ventured to hear Theodore Parker's lectures on the Bible, which would now be considered very conservative; and Wendell Phillips narrowly escaped being mobbed while pleading for the rights of the negro in language which might not misbeseem the lips of Cicero or the pen of Junius.

The document to which I allude is known as 'The Opinion of the Nine Lawyers.' It is rarely met with. Many people have heard of it who never read it, but it would well repay the careful study of all who are interested in political philosophy or political history. It may be found in No. 11 of the Historical Tracts published by Mr. Rider. Here are the names of its authors: Samuel Y. Atwell, Joseph K. Angell, Thomas F. Carpenter, David Daniels, Thomas W. Dorr, Levi C. Eaton, John P. Knowles, Dutee J. Pearce and Aaron White, Jr.

Of some of these men I have taken notice. I will not attempt to say anything of Mr. Angell after Mr. Rider's beautiful tribute in the tract above referred to. Those who heard will never forget the eloquent eulogy pronounced upon Mr. Angell by Chief Justice Ames in response to the resolutions of the bar presented soon after the death of that simple-hearted and gifted man.

Of Levi C. Eaton I did not know enough to justify me in attempting an extended notice. Soon after I came to the bar, he withdrew from active practice and devoted himself to more congenial pursuits. But he was a distinguished member of the General Assembly, and enjoyed and deserved a high reputation as a lawyer. Of Dutee J. Pearce I only know that he was a distinguished public man at a time when it was the habit of the State to select its leading citizens for official position. Aaron White and John P. Knowles are still living, and some other hand than mine, I hope at some distant day, will be called upon to do justice to their memory. The character and career

of Thomas W. Dorr belong to a political history which, I hope, before long will be truthfully written.

The object of this document was to show that the 'People's Constitution,' which, as its friends claimed, had been adopted by a majority of the people in the previous November, was the fundamental law of the State. It was a defense of the theory concerning American constitutional law now commonly known as Dorrism, much talked about and not always correctly understood. Briefly stated it was this: that the people of the States of this Union, subject only to the constitution of the United States, might at any time, by a vote of the majority, make such change in the fundamental law of the State as might seem to them proper, and that without any authority derived from the existing government of the State. This doctrine, in its general terms, had been asserted by Washington, Hamilton, Jefferson, Madison, Marshall and other men of Revolutionary fame, with certain limitations to which I shall hereafter refer, and was received with very general assent by the people of this country. This doctrine was asserted, not as a right of revolution, but as a legitimate exercise by the people of their sovereign power, any resistance to which by the existing government was rebellion.

I am not aware that any one of the lawyers who signed the document ever modified his opinion or doubted its correctness. I am certain that no one of them came to the aid of Mr. Dorr when he attempted to put the 'People's Constitution' into practical operation by military power. The explanation of this will be found in the history of those times. The

soundness of this political theory never was and never can be judicially determined. Chief Justice Job Durfee, in his celebrated charge to the grand jury, maintained that the people could only change their fundamental law when acting in accordance with an existing law of the State; but a charge to a grand jury is not a judicial decree, and it distinctly appears in the opinion of the Supreme Court of this State in the case, The State *vs.* Thomas Wilson Dorr, and in the opinion of the Supreme Court of the United States in the case, Luther *vs.* Borden and others; and indeed, as a matter of common knowledge, that a court must recognize the validity of the government under which it holds its commission, and what is at any time the lawful government of the State must be decided by the political power. The ablest discussion of this point which I know of will be found in the dissenting opinion of Mr. Justice Woodbury in the case of Luther *vs.* Borden. He concurred in the opinion of the court upon the main question, but dissented upon the question of the authority of the State to declare martial law in the general terms in which the statute of Rhode Island was expressed. The doctrine contended for by Mr. Dorr and his associates, whether sound or unsound, is not properly to be confounded with the position of those who claim that the General Assembly of this State can lawfully and constitutionally pass an act providing the machinery by which the qualified electors may, if they so choose, assemble by delegates in convention to revise the constitution whose recommendations, if adopted by the people, would become the fundamental law of the State.

There are three theories upon this subject. The first is, that the people of a State, subject to the constitution of the United States, may, without the authority of the existing government, by a majority vote, change their fundamental law, and that for this purpose they may prescribe all the necessary rules of proceeding, including a definition and description of the persons who constitute the legal people capable of political action; the second is, that under the existing constitution, the Legislature, under its general grant of political power, may invite and request the people to elect delegates to a convention to consider a general revision of the constitution, and provide the necessary machinery for this purpose; and that if the people should elect to hold such convention, its recommendations, if adopted by a majority, would become the fundamental law of the State, and this whether the existing constitution does or does not contain a specific provision for its amendment; the third theory is, that where the existing constitution, as in this State, contains a specific provision for its amendment, it can be lawfully and constitutionally changed in no other way. The solution of these questions depends upon historical inquiry, upon an investigation of political science, and upon a construction of the language of written constitutions. It is unnecessary to say, therefore, that there will be found a wide difference of opinion among men of equal honesty, intelligence and ability.

Opinions upon such questions are, I think, not often determined, or, indeed, much influenced by argument. They depend very much upon the mental

atmosphere of the individuals and the communities that take part in the discussion. While a majority of the people of this State, for instance, are satisfied with their present constitution, it will remain as it is, and whenever the majority of the people desire a change, they will find a lawful and legitimate way to bring it about. I will try to illustrate this in some reminiscences of the political history of the State.